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Ref: EN010115

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17 December 2025

Dear Mr Somers,

PLANNING ACT 2008**APPLICATION FOR DEVELOPMENT CONSENT FOR THE FIVE ESTUARIES OFFSHORE WIND FARM**

This decision was made by Minister Alan Whitehead, on behalf of the Secretary of State for Energy Security and Net Zero

1. Introduction

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the Examining Authority's ("ExA") report dated 17 June 2025. The ExA consisted of 5 examining inspectors; Grahame Gould, Mark Harrison, Matthew Heron, Rebecca Norman and Felicity Webber. The ExA conducted an Examination into the application submitted on 25 March 2024 ("the Application") by Five Estuaries Offshore Wind Farm Limited ("the Applicant") for a Development Consent Order ("DCO") ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Five Estuaries Offshore Wind Farm ("the Proposed Development"). The Application was accepted for Examination on 22 April 2024. The Examination began on 17 September 2024 and closed on 17 March 2025. On 11 September 2025 the Secretary of State issued a Written Ministerial Statement announcing that the statutory deadline for the decision had been reset to 17 December 2025.
- 1.2. On 11 July 2025 the Secretary of State issued a letter seeking information on several matters ("the first information request"). On 21 August 2025 a further letter was sent requesting information ("the second information request"). On 26 September 2025 a further letter was sent requesting information ("the third information request"). On both 14 August 2025, following the first information request, and on 15 October 2025, following the second and third information requests, all Interested Parties ("IPs") were invited to comment on the responses received.
- 1.3. The Order, as applied for, would grant development consent for the construction, operation, maintenance and decommissioning of an offshore wind farm in the southern North Sea off

the coast of Essex and Suffolk (at their closest approximately 37 kilometres from the coast), comprising the following [ER 1.1.1 and 1.3.1 et seq]:

- up to 79 wind turbine generators (“WTG”) within two array areas;
- up to two offshore substation platforms;
- two subsea electrical cables;
- two onshore buried circuits with cable ducts;
- construction of one onshore substation (“OnSS”) and enabling works for the provision of a second substation;
- works to facilitate a connection to a new National Grid Electricity Transmission PLC (“NGET”) substation; and,
- works to provide compensatory habitat for lesser black backed gulls at Orford Ness, Suffolk.

- 1.4. The offshore cables would make landfall at Holland Haven between Frinton-on-Sea and Clacton-on-Sea, and the OnSS would be constructed near the existing Lawford Substation to the west of Little Bromley in order to connect to NGET’s proposed East Anglia Connection Node substation (“EACN”). The Proposed Development is within the administrative area of Tendring District Council and export up to 1080MW. The full description can be found in Part 1 of Schedule 1 of the Development Consent Order.
- 1.5. The Applicant also seeks Compulsory Acquisition (“CA”) and Temporary Possession (“TP”) powers, set out in the draft Order submitted with Application.
- 1.6. Published alongside this letter on the Planning Inspectorate’s National Infrastructure Project website¹ is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 3 to 10 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 11. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER *.*.”].

2. Summary of the ExA’s Report and Recommendation

- 2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:
 - Overarching matters relating to Need and Alternatives to the Proposed Development, including Climate change;
 - Benthic and intertidal ecology, including effects on physical processes and sediment quality;
 - Offshore ornithology;
 - Marine mammals and fish and shellfish ecology;
 - Navigation and shipping;
 - Commercial fishing;
 - Seascape, Landscape and visual effects;
 - Other offshore infrastructure and activities;

¹ <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010115>

- Landscape and visual effects;
- Farming;
- Traffic and transport;
- Air Quality and noise and vibration;
- Onshore ecology and biodiversity;
- Flood risk and water quality;
- Historic environment;
- Climate Change;
- Socioeconomics;
- Cumulative and interrelated effects; and,
- Good Design.

- 2.2. The ExA recommends, subject to the matters set out in Section 11 of its report, that the case for the development has been made and the Secretary of State should make the Order in the form included in appendix E [ER 11.4.1].
- 2.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

3. Summary of the Secretary of State's Decision

- 3.1. As the Proposed Development is an offshore wind turbine generating station that would have a generating capacity greater than 100MW, it falls within Section 15 of the 2008 Act, meets the definition of a Nationally Significant Infrastructure Project ("NSIP") set out in Section 14(1) of the 2008 Act and requires a DCO in accordance with Section 31 of the 2008 Act.
- 3.2. The 2024 National Policy Statements ("NPS"s) EN-1, EN-3 and EN-5 have effect in relation to the Proposed Development and consequently the application is to be determined under the provisions of Section 104 of the 2008 Act. Section 104(2) of the 2008 Act requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement. Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply.
- 3.3. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh the harm identified, and that development consent should therefore be granted.
- 3.4. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting consent for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").
- 3.5. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4. The Secretary of State's Consideration of the Application

- 4.1. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination and responses to the consultation letters. 129 Relevant Representations ("RRs") were made in respect of the Application. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has had regard to the Local Impact Report ("LIR") submitted by Suffolk County Council, Babergh District Council, East Suffolk Council, and Essex County Council in partnership with Tendring District Council, environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act including relevant policy set out in NPSs EN-1, EN-3 and EN-5.
- 4.2. The Secretary of State notes that, in accordance with the transitional provisions set out in section 1.6 of EN-1, the 2024 NPSs had effect for the ExA's consideration of this Application. As such, the Secretary of State has had regard to the 2024 NPSs in making this decision. On 24 April 2025, a consultation on the draft revisions to NPS EN-1 and EN-3 was launched and revised NPSs were laid in Parliament on 13 November 2025 ("draft 2025 NPS"). Whilst these 2025 versions of the NPSs do not have effect for this Application, they are capable of being important and relevant considerations in the Secretary of State's decision-making process.
- 4.3. The Secretary of State has also had regard to the updated National Planning Policy Framework ("NPPF") from February 2025 which was released during the Examination. The Secretary of State had regard to these publications and finds that there is nothing contained within them which would lead him to reach a different decision on the Application.
- 4.4. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed (if applicable) in the overall planning balance in respect of the following issues:
- Alternatives – The Applicant provided sufficient detail of reasonable alternatives and reasons for its choices [ER 3.2.6-3.2.11 and ER 3.3.11-3.34];
 - Navigation and Shipping (Neutral weight) [ER 4.5.43];
 - Commercial fishing (Little negative weight) [ER 4.6.46];
 - Seascape, landscape and visual effects (Little negative weight) [ER 4.7.41];
 - Landscape and Visual effects (Little negative weight) [ER 5.2.57];
 - Traffic and transport (Little negative weight) [ER 5.4.49];
 - Socio-economics (Neutral weight) [ER 6.4.19]; and
 - Cumulative and interrelated effects (Neutral weight) [ER 6.5.25];
- 4.5. The paragraphs below set out the matters where the Secretary of State has further commentary and analysis to add beyond that set out in the ExA report, including those matters on which further information has been sought.

The Need for the Proposed Development

- 4.6. The ExA concludes that the urgent need for offshore wind for both energy security and net zero is established by NPS EN-1 and NPS EN-3, and notes that the Proposed Development would make a meaningful contribution to meeting this need [ER 3.4.1]. The ExA was content that the overarching need argument for the Proposed Development is very strong in terms

of meeting the urgent need for low carbon energy and ensuring security of supply [ER 3.4.1 et seq.].

- 4.7. The Secretary of State notes the impact of wake effects on other offshore windfarms and the impact on cumulative Greenhouse Gas (“GHG”) emission reductions (discussed at paragraph 4.56 of this letter). The Secretary of State considers that while the capacity of some projects may be slightly reduced, cumulatively there is a greater capacity of clean electricity generation with the Proposed Development. The Secretary of State, therefore, concludes that this does not affect the need case in the NPS, or the need for the Proposed Development.
- 4.8. The ExA ascribed the need for the Proposed Development very great positive weight [ER 3.4.2]. The ExA notes that this weighting includes an allowance for the contribution the Proposed Development would make to assisting with addressing the effects of climate change [ER 8.3.7].
- 4.9. The Secretary of State has ascribed substantial positive weight to the need case. As noted above, the ExA ascribed the need case very great positive weight. The difference in the terminology used by the Secretary of State is to ensure consistency to the policy set out in NPS EN-1 regarding substantial weight being ascribed to the need case, however the conclusions are different in terminology only and the weighting ascribed is the same in every other sense.

Benthic and intertidal ecology

- 4.10. At the close of the Examination an outstanding material disagreement with Natural England (“NE”) regarding biogenic and geogenic reef post-construction monitoring remained. As stated in the NE Risks and Issues Log [REP8A-53] (Point 39 – E Benthic Ecology), NE consider that post construction surveys should be conducted within one year of the cessation of construction activities, rather than within two years as proposed by the Applicant.
- 4.11. On 11 July 2025, the Secretary of State therefore requested the Applicant revise the Offshore In-Principle Monitoring Plan (“OIPMP”) to require that post-construction surveys of biogenic and geogenic reef features are completed within one year of cessation of construction activities. The Applicant confirmed on 8 August 2025 that it had updated the OIPMP as requested.
- 4.12. Following the Secretary of State’s all IPs request to comment dated 14 August 2025, NE responded on 5 September 2025 welcoming the updated OIPMP. However, NE advised that further commitments must be included in the OIPMP to ensure that if monitoring observations identify issues, further monitoring and/or remedial action will be undertaken by the Applicant to better understand the potential impacts on habitats and/or where appropriate, the effectiveness of remediation.
- 4.13. On 26 September 2025, the Secretary of State, in line with NE’s response of 5 September 2025, asked the Applicant to revise the OIPMP to include further measures that may be necessary should the monitoring of ‘reef’ and other features identify issues, such as more targeted monitoring or remedial action. The Applicant confirmed on 10 October 2025 that it had updated the OIPMP as requested.
- 4.14. The Secretary of State is satisfied with the Applicant’s amendments to the OIPMP. Noting this, the Secretary of State agrees with the ExA [ER 4.2.43] that little negative weight should

be ascribed to matters related to benthic and intertidal ecology - including effects on marine processes, and water and sediment quality - in the overall planning balance.

Offshore ornithology

- 4.15. Subject to mitigation, the ExA agrees with the Applicant's findings in Chapter 4: Offshore Ornithology of the ES [ER 4.3.30]. The ExA notes that the significance of residual effects from the Proposed Development for offshore birds would be no greater than negligible or minor adverse from any phase of the Proposed Development, alone or cumulatively, and that it would not be significant in Environmental Impact Assessment ("EIA") terms [ER 4.3.30]. The ExA notes the Applicant's assessment of offshore ornithology has followed the mitigation hierarchy and meets the policy tests stated in NPS EN-1 and NPS EN-3 [ER 4.3.31]. Having considered the effects of the Proposed Development over its lifetime, the ExA ascribes little negative weight to offshore ornithological matters in the overall planning balance [ER 4.3.32].

Offshore In-Principle Monitoring Plan

- 4.16. At the close of the Examination there was an outstanding material disagreement with NE, as detailed in the Risk and Issues Log [REP8A-053] (Point 29 - C Offshore Ornithology & Point 10 – DCO), that the OIPMP does not include any post-consent ornithological monitoring, other than those required for compensation measures under the Habitats Regulations. Monitoring of ecological impacts is required by NPS EN-1 paragraph 4.2.12 and EN-3 paragraphs 2.8.83 and 2.8.221, the Chartered Institute of Ecology and Environmental Management ("CIEEM") Guidelines for Ecological Impact Assessment in the UK and Ireland, and British Standard ("BS") 42020:2013 (Biodiversity – Code of practice for planning and development). Offshore wind farms are expected to conduct monitoring of the actual impacts versus the predicted impacts outlined in the ES, and to detect any actual impacts that are significantly beyond those predictions.
- 4.17. On 11 July 2025, the Secretary of State asked the Applicant to revise the OIPMP to require appropriate ornithological monitoring to validate the predictions made within the ES and detect effects significantly beyond those predictions, as well as to help address key knowledge gaps in modelling and the baseline environment of the site. It was advised that this should include, but not be limited to, a GPS tagging study to help address knowledge gaps on the impacts from vessel traffic on red-throated divers, as highlighted by the Applicant in Section 2.3 of the Red-Throated Diver Note [REP6-052].
- 4.18. On 8 August 2025, the Applicant confirmed that following a meeting with NE, the OIPMP was updated to include further consideration of ornithological monitoring which seeks to target specific species and / or knowledge gaps and address possible hypothesis that could be tested, focussing on two species – lesser black-backed gulls and red-throated diver. The Applicant stated that further discussions and agreement will be required post-consent with NE and the MMO, and that it has updated the OIPMP with a commitment to undertake ornithological monitoring but with a preference for wider collaborative studies.
- 4.19. However, the Applicant states that, as outlined in the updated OIPMP, with respect to the tagging of red-throated divers, it has proposed this in the context of seeking to agree flexibility to work within the 2km buffer of the Outer Thames Estuary ("OTE") Special Protection Area ("SPA"). The Applicant believes the tagging could provide information on the knowledge gap

of vessel disturbance in this area and validate the ES and 'Report to Inform Appropriate Assessment' predictions.

- 4.20. Following the Secretary of State's all IPs request for comments dated 14 August 2025, NE responded on 5 September 2025 stating disagreement with the suggested conditionality of conducting the monitoring, and instead recommended that as any new monitoring data on the impacts of vessel traffic on RTD would be useful to the offshore wind industry, the monitoring should be progressed irrespective of the outcomes of post-consent discussions relating to work within the 2km buffer.
- 4.21. On 26 September 2025, the Secretary of State, in line with NE's response of 5 September 2025, asked the Applicant to revise the OIPMP to remove the caveat at Section 4.5.14 that monitoring will only occur should cable-laying works within 2km of the OTE SPA between November - March (inclusive) take place. Additionally, the Applicant was asked to include colour-ringing of lesser black-backed gull chicks, as recommended by NE, within Section 4.5.9. The Applicant responded on 10 October 2025 and updated the OIPMP as requested.
- 4.22. The Secretary of State considers that this matter has now been resolved. Noting that the Applicant has amended the OIPMP to include further consideration of ornithological monitoring and further discussions and agreement with NE and the MMO is required at the post-consent stage, the Secretary of State is content that the updated OIPMP can validate the key ornithological predictions made within the ES and detect effects significantly beyond those predictions, as well as to help address key knowledge gaps.

Submission of Offshore Monitoring Data

- 4.23. The OIPMP also did not include detail relating to data-sharing. The submission of monitoring data to The Crown Estate's Marine Data Exchange ("MDE"), which is a publicly available database of OWF environmental monitoring, is required by NPS EN-3 paragraph 2.8.86. The submission of data enables the effects of the development and the efficacy of associated mitigation/compensation to be documented and contribute to the evidence base for better decision making. As the MDE feeds into DEFRA statistics, the submission of data would also contribute to monitoring of targets under the Environment Act 2021 and the Environmental Improvement Plan.
- 4.24. Accordingly, on 11 July 2025, the Secretary of State asked the Applicant to revise all sections (not limited to offshore ornithology) of the OIPMP to require the regular submission of all relevant pre-construction, construction, and post-construction/operational survey and monitoring data to the MDE and relevant Local Environmental Records Centres.
- 4.25. The Applicant responded 8 August 2025 and updated the OIPMP, as requested, making this commitment up-front for all monitoring reports. In addition, the Applicant has committed to provide the results of any ornithological monitoring to the Seabird Monitoring Programme. The Secretary of State considers this matter has now been resolved.

The Secretary of State's Conclusions

- 4.26. Noting the Applicant's amendments, the Secretary of State agrees with the ExA's weighting [ER 4.3.32] and ascribes little negative weight to matters related to offshore ornithology in the overall planning balance.

Marine mammals and fish and shellfish ecology

4.27. The ExA concludes that the Applicant's assessment regarding marine mammals and fish and shellfish ecology is appropriate having regard to the NPSs [ER 4.4.36 and 4.4.38]. Subject to mitigation, as secured through the provisions of the Deemed Marine Licences ("DMLs") secured in the Order, the ExA agrees with the Environmental Statement ("ES") conclusions that the significance of the residual effects either alone or cumulatively, would not be significant in EIA terms [ER 4.4.37-38]. The ExA recommends that the requirements of the DMLs in the draft Order [REP8A-042] are amended to extend the duration of the restrictions applying to the undertaking of piling, seabed preparation, and cable laying works in the interests of protecting spawning herring and resultant eggs and larvae in the proposed southern array area [ER 4.4.39]. The recommended changes to the DMLs were included in the ExA's recommended Order and relate to renumbered Condition 21(6) in Schedule 10 and condition 22(6) in Schedule 11 [ER 4.4.39]. The ExA concludes that when the effects of the Proposed Development are considered over its lifetime, the ExA ascribes little negative weight to marine mammal and fish, and shellfish ecology matters in the planning balance [ER 4.4.41].

Soft-Start Maximum Hammer Energy

4.28. At the close of the Examination, an outstanding disagreement remained between NE and the Applicant [REP8A-053] (Point 10 in H – Marine Mammals). NE consider that to minimise the risk of injury to marine mammals from piling noise, soft-start maximum hammer energy should be limited to 10%. On 11 July 2025, the Secretary of State asked the Applicant to revise the Outline Marine Mammal Mitigation Protocol – Piling ("oMMMP"), to reduce the soft-start maximum hammer energy from 15% to 10%. On 8 August 2025, the Applicant provided a revised oMMMP with the requested amendment. The Secretary of State considers this matter resolved.

Monitoring of UXO Clearance Underwater Noise

4.29. The Applicant's oMMMP unexploded ordnance ("UXO") ("oMMMP-UXO") [REP7-046] does not include any monitoring of underwater noise. Monitoring of ecological impacts is required as per NPSs EN-1 (Paragraph 4.2.12) and EN-3 (Paragraph 2.8.83 & 2.8.221), the CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland, and BS 42020:2013 (Biodiversity – Code of practice for planning and development). On 11 July 2025, the Secretary of State asked the Applicant to revise the OIPMP and the oMMMP-UXO. On 8 August 2025, the Applicant provided a revised oMMMP-UXO to include the need to monitor underwater noise during UXO clearance activities, where practicable, taking into account shipping and navigation risks. The Applicant, however, noted that the document is provided for information only and that UXO surveys and clearance activities are excluded from the DML and, therefore, the OIPMP has not been updated as it would not be relevant to the discharge of that plan. The Secretary of State has accepted the Applicant's explanation and considers this matter is resolved.

Sensitivity of Spawning Herring to Noise

4.30. At the close of the Examination, outstanding disagreement remained between NE and the Applicant, as NE [REP8A-053] considered that the sensitivity of spawning herring to underwater noise impacts should be assessed as greater than medium. On 11 July 2025, the Secretary of State asked the Applicant to revise ES 6.2.6 Fish and Shellfish Ecology

[APP-075] to assess spawning herring as having a high sensitivity to noise impacts. On 8 August 2025, the Applicant responded that it remains confident a “medium” sensitivity classification is appropriate. The Applicant proposed the implementation of a seasonal piling restriction to avoid impacts to herring during the peak spawning season, and the implementation of this mitigation will reduce the magnitude of impact to a “negligible” level. The Applicant noted that if the sensitivity of spawning herring were to be categorised as “high”, the overall significance of effect, once the agreed mitigation is applied, would be “minor adverse” which is not significant in EIA terms. On 5 September 2025, NE confirmed that it is satisfied with the Applicant’s response regarding sensitivity of herring to noise impacts, and now considers this issue resolved. The Secretary of State is content this matter is resolved. The Secretary of State agrees with the ExA conclusion regarding the seasonal piling restriction to be between 1 November to 24 January.

Sensitivity of Marine Mammals to Noise

- 4.31. The Secretary of State was also unclear in the final deadline submissions from NE and Marine Management Organisation (“MMO”) of their respective positions on the sensitivity scoring of cetaceans and the amendments that the Applicant needed to make to resolve their outstanding concerns [Point 5 in H – Marine Mammals in their Risk and Issues Log [REP8A-053]. On 11 July 2025 the Secretary of State asked NE and the MMO to provide clarity on their positions. On 8 August 2025, NE confirmed its view that, in many instances, lower scores were assigned, thus it advised that it needs to be reviewed and amended accordingly, especially in relation to harbour porpoise due to its high sensitivity to underwater noise. However, NE is content to close this matter noting that the implementation of Noise Abatement Systems will reduce the significance of the effect to acceptable, non-significant, levels. On 24 July 2025, the MMO confirmed it was deferring to NE on this matter. The Secretary of State is content this matter is resolved but notes that this does not preclude him from requiring higher sensitivity scores in future decisions.

Submission of Noise Monitoring Data to UK Marine Noise Registry

- 4.32. The oMMMP does not include detail relating to data-sharing. The UK Marine Noise Registry (“MNR”) is hosted and maintained by the JNCC to collect data on pre-construction (estimated) and post-construction (actual) underwater noise from human activities. The submission of data enables the effects of the Proposed Development and the efficacy of associated mitigation and compensation to be documented, and contribute to the industry evidence base. On 11 July 2025, the Secretary of State asked the Applicant to revise the OIPMP, the oMMMP-P, and the oMMMP-UXO to include detail for sharing data with the MNR. On 8 August 2025, the Applicant responded that its understanding is that the JNCC MNR is not currently set up to receive noise monitoring data. The Applicant notes the requirement to submit close out reports into the MNR is secured through Condition 23 of Schedule 11 and Condition 22 of Schedule 12 of the draft Order, and therefore the close out reports will be submitted to the MMO in accordance with the DML and will also be sent to the JNCC MNR. The Secretary of State is content this matter is resolved.

Fish and Shellfish Monitoring

- 4.33. The Applicant’s OIPMP [REP8A-023] does not include any fish and shellfish monitoring. The monitoring of actual ecological impacts against the predicted impacts as well as the detection of impacts that are significantly beyond those predictions is required by NPS EN-1 and EN-3, CIEEM 2018 Guidelines for Ecological Impact Assessment in the UK and Ireland, and BS

42020: 2013. On 11 July 2025 the Secretary of State asked the Applicant to revise the OIPMP.

- 4.34. On 8 August 2025, the Applicant responded that no additional monitoring is proposed. The Applicant noted that in Section 9.32 of OIPMP – Revision H, noise monitoring is proposed to be undertaken to validate, within reason, the assumptions made within 6.2.6 Fish and Shellfish Ecology [APP-075] and 6.2.7 Marine Mammal Ecology [APP-076]. The Applicant noted that there are no residual significant effects concluded within the ES (after the implementation of secondary mitigation measures which are summarised in Table 6:12 of 6.2.6: Fish and Shellfish Ecology [APP-075], and detailed in 6.5.6.4 Herring Seasonal Restriction Note - Revision D [REP6-013] and 9.8 Dredge Disposal Site Characterisation Report – Revision C[REP7-039]). Furthermore, the Applicant highlights that given the high level of activity and development in the Outer Thames area, it would not be possible to detect any attributable change or provide any meaningful monitoring data at the project level to validate the impact assessment.
- 4.35. On 21 August 2025, the Secretary of State asked NE and the MMO to comment on the Applicant's response.
- 4.36. On 5 September, NE responded stating in regard to monitoring of impacts to fish and shellfish, there were no significant residual impacts in the ES that would require additional monitoring, therefore NE are content that no further monitoring is required. NE note that the underwater noise monitoring of the first four foundation piles which the Applicant has committed to, will be utilised to validate the assessed impacts from underwater noise to both marine mammals and fish and shellfish receptors and consider this to be sufficient for, and proportionate to, the outcomes of the ES.
- 4.37. Following the responses from the Applicant and NE, the Secretary of State agrees that there is no further monitoring that the Applicant could undertake at the project-level to validate the impacts as assessed in the ES. The Secretary of State is content this matter is resolved.

Marine Mammal Monitoring

- 4.38. At the close of the Examination, an outstanding disagreement remained between NE and the Applicant [REP8A-053] (Point 10 in the Tab 'A - DCO'). NE consider that marine mammal monitoring should be required due to the potential impacts from the Proposed Development. The Secretary of State considers the monitoring of ecological impacts is required, as per NPSs EN-1 and EN-3, CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland, and British Standard 42020:2013. On the 11 July 2024, the Secretary of State asked the Applicant to revise the OIPMP to include monitoring of effects from the Proposed Development on marine mammals.
- 4.39. On 8 August 2025, the Applicant stated that it has committed to undertaking underwater noise monitoring to validate the predictions made within the ES, which will demonstrate the realised impact ranges to marine mammals from piling noise and that they are within the predictions of the ES. The Applicant notes the MMO confirmed during Examination that they were content with this approach in paragraph 1.5.1 of their Deadline 8A response [REP8A-046]. The Applicant considers further marine mammal monitoring is unnecessary and disproportionate, due to the lack of significant effects predicted for marine mammals, and the level of precaution built into the assessment. The Applicant highlights that the OIPMP provides a framework for further discussion on monitoring in the post-consent phase, and

that the final monitoring plan must receive written approval by the MMO in consultation with the relevant statutory nature conservation body (“SNCB”), as outlined in the DML at condition 21(1)(f) of Schedule 10 and condition 22(1)(f) of Schedule 11. The Applicant does not consider that monitoring should be undertaken as a matter of course, but for specific purposes and to test a specific hypothesis, such as assessing the effectiveness of mitigation (e.g. noise monitoring during piling). The Applicant also notes that the logistics of undertaking marine mammal monitoring for the Proposed Development would be very challenging, and it is not considered likely to be feasible to safely undertake monitoring and provide scientifically robust data due to the number of buoys needing to be deployed in a heavily constrained shipping and fishing area.

- 4.40. On 21 August 2025, the Secretary of State asked NE and the MMO to comment on the Applicant's response.
- 4.41. On 12 September 2025, the MMO responded to the Secretary of State's letter inviting all IPs to comment (14 August 2025). MMO stated they agree that any further monitoring of underwater noise at foundation pile locations can be agreed at the post consent stage. The MMO defers to NE in relation to any additional monitoring required. However, the MMO does note that further monitoring may be required dependant on the noise mitigation system used to prove effectiveness.
- 4.42. On 5 September, NE responded stating that although they do not fully agree with the Applicant's response, NE consider that additional monitoring for marine mammals is not required for the Proposed Development. NE note the Applicant has committed to, and secured within the DCO, monitoring of underwater noise generated from installation of the first four foundation piles, which will provide data to validate the underwater noise modelling and assessment of impacts from underwater noise to marine mammals in the ES. There are no significant residual effects from the EIA that NE consider require additional or targeted monitoring.
- 4.43. Following the responses from the Applicant, NE, and the MMO, the Secretary of State agrees that there is no further monitoring that the Applicant could undertake at the project-level to validate the impacts as assessed in the ES. The Secretary of State is content this matter is resolved.

Underwater noise monitoring

- 4.44. At the end of the Examination, there was also an outstanding disagreement between the Applicant and NE, [REP8A-053] (Point P1 – Principal Areas of Disagreement Summary Statement) as NE considered that Schedules 10 and 11 of the DML did not secure that piling must cease in the event that the monitoring of underwater noise at the foundation piles highlights that the noise impact is significantly in excess of the predicted impacts assessed.
- 4.45. The Secretary of State agrees with NE that should monitoring of underwater noise at the foundation piles demonstrate noise impacts significantly in excess of those predicted in the ES, then piling must cease until contingency measures have been implemented and further monitoring has been agreed. As such, the Secretary of State has amended condition 28 of Schedule 10 and condition 29 of Schedule 11 to of the Order in line with the advice from NE. The Secretary of State is content that this matter is resolved.

The Secretary of State's Conclusion

- 4.46. Following the changes recommended by the ExA and the responses received during the decision-making stage, the Secretary of State agrees with the ExA weighting [ER 4.4.41] and ascribes little negative weight to matters related to marine mammals and fish and shellfish ecology in the overall planning balance.

Other offshore infrastructure and activities – wake effects

- 4.47. The ExA disagrees with the Applicant's assessment that paragraphs 2.8.44 to 2.8.50 of NPS EN-3 do not apply to offshore wind farms policy, noting that it does not imply there is a 'closed list' of applicable infrastructure types, and no infrastructure types are expressly excluded [ER 4.8.29]. The ExA considers that it should not be read as precluding the consideration of wake loss effects [ER 4.8.31]. The ExA considers that based on the East Anglia Two Limited ("EA2L") wake loss assessment ("WLA"), which found a 1.3% generating loss from the Proposed Development, that the loss would be relatively modest and therefore marginal [ER 4.8.32 and ER 4.8.8]. The ExA considers that any wake effects experienced by East Anglia Two Offshore Wind Farm ("EA2") would not be at a level requiring mitigation [ER 4.8.41]. The ExA shares the Applicant's views, that mitigation would likely be counterproductive [ER 4.8.38], because it would involve a reduction of installed WTGs and/or their more dense siting in a smaller northern array area which would lead to a greater generating loss [ER 4.8.38]. The ExA agrees with the Applicant that any effects attributable to wake effects would come within the sensitivity included in the Applicant's GHG assessment [ER 4.8.25 and ER 4.8.37] and any modest generating losses are unlikely to have any significant effect on the UK's overall reduction in GHG emissions [ER 4.8.37]. The ExA concludes that the Proposed Development's wake effects on EA2 attracts very little negative weight in the overall planning balance [ER 4.8.41].
- 4.48. On 20 August 2025, the Applicant submitted a wake effects assessment ("WEA") to the Secretary of State, although it reiterated its view the assessment was not needed. The Applicant's WEA concludes that the average loss to EA2 from the Proposed Development is in the order of 1%. The Applicant's WEA also concludes EA2 would result in loss of power to the Proposed Development of between 0.71% to 1.25%. The Applicant's WEA concludes that there is essentially no net impact when factoring in wake effects of EA2 on the Proposed Development.
- 4.49. On 5 September 2025, EA2L provided its view that limited weight should be attached to the Applicant's WEA as it appears to have been undertaken internally, in contrast with the independent assessment produced by EA2L. EA2L notes differences in the data and models used. EA2L notes the Applicant's argument, that there are wake effects from EA2 on the Proposed Development, is irrelevant because the Applicant should be assessing impacts on the consented EA2.

The Secretary of State's Conclusion

- 4.50. The Secretary of State disagrees with the Applicant's interpretation of the policy contained within the NPSs that relates to the assessment of wake effects. The Secretary of State agrees with the ExA that 2024 NPS EN-3 section 2.8 does not imply there is a 'closed list' of applicable infrastructure types, and paragraph 2.8.301 states that the Secretary of State should consider any impacts which it determines are relevant and important.

- 4.51. In particular, the Secretary of State highlights the text at 2.8.232 of the draft 2025 EN-3 which makes clear that “Applicants” should demonstrate that they have made reasonable endeavours to mitigate the impact of wake effects on other offshore wind generating stations” although, as noted at 2.8.233, there is no expectation that wake effects can be wholly removed. There is also an expectation at 2.8.316 that the Applicant will have carried out an assessment of inter-array wake effects and shown that they have made reasonable attempts to work collaboratively. The text at 2.8.176 makes clear that there are “clear merits for applicants to make an assessment of inter-array wake effects between their proposed developments, and nearby offshore wind generating stations that are planned, consented or operational”. Therefore, while the Secretary of State recognises that the 2024 NPSs have effect for this application, he does note the substance of those provisions within the draft 2025 NPS EN-3 supports this position. The Secretary of State recognises EA2 has not yet been built, but considers that for approved, licensed or permitted infrastructure the Applicant will need to consider wake effects – and therefore as EA2 has received planning approval, it has been necessary to consider wake effects upon it.
- 4.52. With regard to the Applicant’s WEA, the Secretary of State notes the results are broadly similar to the EA2L WLA. The Secretary of State is satisfied that the EA2L WLA represents a worst-case approach, and further notes that it has been conducted externally to EA2L, in contrast to the Applicant undertaking its assessment internally.
- 4.53. The Secretary of State has therefore concluded that the wake effect assessment produced by EA2 should be relied upon as the worst-case assessment of wake effects, but nevertheless agrees with the ExA that the generating losses experienced will be relatively modest and therefore marginal.
- 4.54. The Secretary of State notes that the parameters of the Proposed Development, which includes an approximately 5.3km buffer distance (as part of the TCE’s provision for a 5km buffer distance around wind farms), and refinements to the northern array boundary, which has the effect of increasing the average distance between the Proposed Development and EA2. The Secretary of State agrees with the ExA that further mitigation would be counterproductive as it would result in total generating loss greater than the wake impacts. On 21 August 2025, the Secretary of State had asked the Applicant and EA2L to provide comments on a potential wake effects related requirement which would require for either a suitable WEA, or alternative mitigation for wake effects, to be submitted to the Secretary of State. However, the Secretary of State notes that the Applicant has submitted a WEA on 20 August 2025. The Secretary of State therefore concludes that a requirement is not needed given that any generating losses experienced by EA2 would be relatively modest, and the fact that the proposed mitigation is sufficient. Further, the Secretary of State has noted that the Applicant submitted a WEA, although, as noted above, the EA2L WEA has been preferred in concluding on this matter, for the reasons set out in paragraph 4.52 and 4.53 above.
- 4.55. Regarding cumulative wake loss impacts on other nearby wind farms, the Secretary of State considers that while the capacity of some projects may be slightly reduced, cumulatively there is a greater capacity of clean electricity generation with the Proposed Development.
- 4.56. Regarding implications of wake effects on the assessment of GHG emissions, the Secretary of State agrees with the ExA that wake effects would come within the sensitivity included in the Applicant’s GHG assessment, and any relatively modest generating losses are unlikely to have any significant effect on the UK’s overall reduction in GHG emissions.

- 4.57. The Secretary of State agrees with the ExA and ascribes this matter very little negative weight in the planning balance.

Farming

- 4.58. The ExA recognises the Applicant's commitment to appointing an Agricultural Liaison Officer ("ALO") who would engage with farmers and landowners to accommodate works access to affected land. The duties of the ALO would include preparing land condition records for the land at an early stage and assessing ground conditions to inform the design of haul roads best suited to their purpose. The ExA considers that the proposed haul routes' (with one exception) construction, use, and reinstatement, being a temporary need, would be acceptable [ER 5.3.51].
- 4.59. Noting that Requirement 14 (Restoration of land used temporarily for construction) in Part 1 of Schedule 2 of the draft Order [REP8A-004] did not include a mechanism to establish the baseline condition of land temporarily used for construction, on 11 July 2025 the Secretary of State asked the Applicant to comment on the inclusion of the Records of Conditions in Requirement 14 to ensure that agricultural land to be "reinstated" is in accordance with the Records of Condition pursuant to the Code of Construction Practice ("CoCP") [REP8A-015]. The Applicant responded stating that it does not see any need to make such an addition to the requirement. It noted that the CoCP already secures a record of condition and pre-construction surveys which would establish the baseline condition, for both general condition and specific purposes (such as the soil management plan, or drainage). It also noted that the Outline Landscape and Ecological Management Plan ("oLEMP") [REP8A-017] also specifies that surveys are required for the purposes of designing and ensuring the sufficiency of restoration, and that these surveys will feed into the appropriate record of condition. The Applicant does not consider that it is necessary or appropriate to duplicate those provisions in this requirement and that producing a record of condition at the time access to land is taken is an entirely standard working practice which is not normally secured in planning consents (it is sometimes secured in voluntary land agreements). The Applicant noted it would require such a record in order to be able to establish compliance with the restoration requirement, comply with any voluntary land agreements, or provide a suitable record for the assessment of compensation for use of powers.
- 4.60. On 11 July 2025, the Applicant was also asked to revise the CoCP [REP8A-015] to include details of the scope of the Records of Condition (part 4.2.2 (bullet point 2 of the CoCP)), which should include (as a minimum) the details set out in paragraphs 1.4.47 of the ES Volume 6, Part 3, Chapter 1: Onshore Project Description [AS-041]. The Applicant responded confirming that it has updated section 4.2.2 of the CoCP to include details of those elements which commonly form the minimum scope for a record of condition undertaken prior to the commencement of construction or ahead of any intrusive pre-commencement works. It confirmed that the scope included in section 4.2.2 of the CoCP reflects that which has been discussed with landowners, and which is envisaged to be included in voluntary land agreements when these are finalised. The Applicant also confirmed that each record of condition will be tailored to reflect the specific characteristics and circumstances of the land parcel or landholding, including any discussions held on-site with the landowner and/ or occupier in respect of specific observations, and that this will ensure that the record is relevant and appropriate for each specific location. The Applicant also noted that, in line with paragraph 1.4.47 of 6.3.1: Onshore Project Description [AS-041], this includes recording the location of existing hedgerows, fences, and trees which may be impacted and need to be replaced. The Applicant noted that given the inspection is visual

prior to works it is not feasible to include land drains as these are buried, with often only outfalls visible from a non-intrusive inspection, however, separate drainage surveys are already a pre-construction requirement of section 4.9 of the CoCP and included in the construction practice addendum. The Applicant noted that surveys will be undertaken as a matter of course (whether a voluntary land agreement has been satisfactorily concluded or not) in order to inform the pre- and post-construction drainage schemes.

The Secretary of State's Conclusion

- 4.61. The Secretary of State is satisfied that the Applicant's response provides sufficient detail and explanation to demonstrate that a mechanism to establish the baseline condition of land is already adequately secured. The Secretary of State welcomes the updates made by the Applicant to the CoCP. Noting these updates, the Secretary of State agrees with the ExA's conclusions on farming and ascribes these impacts moderate negative weight in the planning balance.

Air quality and Airborne Noise and Vibration

- 4.62. The ExA considers the Applicant's assessments in relation to air quality, airborne noise and vibration accord with the provisions of paragraphs NPS EN-1, and the proposed mitigation measures would be acceptable [ER 5.5.26 et seq.]. Subject to the application of the proposed mitigation measures, the ExA is content that residual effects would not be significant in EIA terms in relation to effects on human receptors at any phase of the Proposed Development, alone or cumulatively [ER 5.5.28]. When effects of the Proposed Development are considered over its lifetime, the ExA ascribes little negative weight to effects on human health from air quality and effects from airborne noise and vibration in the planning balance [ER 5.5.30].

Air Quality Monitoring During Construction

- 4.63. The Secretary of State notes that the Applicant had not included monitoring of dust emissions during construction despite ES Volume 6, Part 3, Chapter 10: Air Quality [APP-092] noting a number of high sensitivity receptors nearby and the magnitude of dust emissions from earthworks, construction, and trackout assessed as 'large'. On 11 July 2025, the Secretary of State therefore asked the Applicant to revise the CoCP [REP8A-015] to require dust deposition, dust flux, and PM10 continuous monitoring during construction, with the locations and reporting of such monitoring to be agreed with the relevant planning authorities, and to include baseline monitoring before work on each onshore phase commences. This is in line with *IAQM Guidance on the Assessment of Dust from Demolition and Construction* (2023).
- 4.64. On 8 August 2025, the Applicant confirmed it had revised section 4.4 of the CoCP to commit to agreeing dust deposition, dust flux, and/or PM10 continuous monitoring during construction, where appropriate and in line with the IAQM guidance, with the locations, type, durations (including baseline) and reporting of such monitoring to be agreed with the discharging authority. Noting the Applicant's response, the Secretary of State is satisfied that this matter has been resolved.

Noise from the Proposed Development's OnSS

- 4.65. IPs, including Essex County Council ("ECC") and Tendring District Council ("TDC"), raised concerns in relation to cumulative noise from the Proposed Development's OnSS being sited

close to the substations proposed for the North Falls Offshore Wind Farm (“NFOWF”) and the EACN [ER 5.5.19]. In response, the Applicant submitted an Onshore Substations Operational Noise and the Outline Noise Complaints Protocol (“the Noise Protocol”). This document illustrated that the proposed substations would operate with a cumulative noise level of 35dB LarTr [ER 5.5.19]. The Noise Protocol notes that lower individual operating noise limits for each of the substations would be secured through their respective DCOs and that the operational noise limits for the Proposed Development’s OnSS are stated in Requirement 15(1) of the draft Order [REP8A-004], with the limit at Norman’s Farm being 31dB LarTr [ER 5.5.19].

- 4.66. TDC and ECC in their closing submission [REP8A-044] raised concerns about the outline noise complaints protocol included in the outline noise complaints protocol [REP7-080], including the amount of time identified for undertaking investigations of possible noise level breaches [ER 5.5.21].
- 4.67. The ExA considers that, so long as the noise levels stated in Requirement 15(1) of the draft Order are adhered to, the operation of the Proposed Development’s OnSS alone would not be the source of unacceptable noise [ER 5.5.24]. The ExA shares some of TDC and ECC’s concerns about the potential length of time it would take to investigate noise complaints to determine which of the three proposed substations was the source [ER 5.5.25]. The ExA notes that the final version of the noise investigation protocol would be subject to the approval of ECC [ER 5.5.25].
- 4.68. Noting the concerns raised, on 11 July 2025, the Secretary of State asked the Applicant to provide comments on the amended timeframes for investigation of noise complaints as proposed by ECC in Section 8 of its Deadline 8A submission [REP8A-044].
- 4.69. On 25 July 2025, the Applicant responded that the Noise Protocol was updated during the Examination following discussions and feedback from ECC. The Applicant noted that the Noise Protocol is an outline document and that Requirement 15 requires a final protocol to be submitted to and approved by the discharging authority. The Applicant noted that the final version of the protocol will include timeframes, and the Applicant therefore does not consider it necessary to finalise these details prior to obtaining development consent, as the primary purpose of the Noise Protocol will be to identify the method by which a complaint would be investigated.
- 4.70. In its response, the Applicant also noted that the operational noise level limit in Requirement 15 is very low and occurrence of complaints regarding normal substation operations are considered extremely unlikely. The Applicant noted section 6.4 of the Noise Protocol identifies that the first stage in the process would be to undertake a site walkaround to identify any equipment operating incorrectly, within 48 hours of receipt of a complaint. The Applicant noted the identified timeframes are based on extensive professional experience of how long these activities take; for example, cost-benefit analysis of mitigation options requires information from equipment and mitigation suppliers and the timeframe for providing this is outside of the operator’s control. The Applicant noted these timeframes are the expected maximum and every effort will be made to expedite the process, and it may be possible to complete the work quicker than specified when resources are available and weather conditions are appropriate.
- 4.71. On 7 August 2025 ECC and TDC also noted that the Applicant’s Outline Noise Complaints Protocol lacks a Joint Noise Panel to collectively deal with the potential cumulative noise,

and the current approach is fragmented and down to the individual operator to investigate any noise complaints. ECC and TDC maintained their request that any noise complaints during the operational stage are addressed by all three developers concurrently. Both councils consider that the Applicant's current timeframe for complaints to be investigated, at 8.5 weeks for a recommended mitigation by the nearest operator, is wholly unacceptable. ECC and TDC therefore requested an amendment to Requirement 15(2) of the Order to reflect a collaborative complaint handling approach in the noise investigation protocol.

- 4.72. Noting the concerns of ECC and TDC, on 21 August 2025 the Secretary of State requested the Applicant, NFOWF, and NGET provide comments on a proposed amendment to Requirement 15(2) to require a collaborative approach to complaint handling.
- 4.73. The Applicant responded stating it does not believe that it is necessary to include a requirement to consult NFOWF and NGET on the protocol as 10.36 Onshore Substations Operational Noise and the Outline Noise Complaints Protocol [C1-018] has already been discussed and agreed with both of those parties. The Applicant provided alternative wording to that suggested by the Secretary of State, which removed the need to consult with NFOWF and NGET, but included a process for the investigation of cumulative operational noise from the three proposed substations. Both NGET and NFOWF responded stating they are in agreement with the Applicant's wording of the requirement.
- 4.74. The Secretary of State notes that this wording has been agreed with NFOWF and NGET, provides for a process to investigate cumulative operational noise, and requires final noise investigation protocol to be approved by the discharging authority. The Secretary of State has therefore accepted this wording and inserted this version of the Requirement into the Order, and subsequently considers that this matter has now been resolved.

Noise Monitoring During Construction

- 4.75. The Secretary of State also notes that the Applicant's CoCP did not include noise monitoring, potentially resulting in the situation that where there would be no means of determining whether the noise levels limits committed to by the Applicant are being complied with during the construction phase. Under BS 5228, monitoring of on-site noise levels is regarded as essential and must be implemented to ensure that noise limits are not exceeded. NPS EN-1 Paragraph 5.12.9 states that for the management of construction noise, the principles of BS 5228 should be used. NPS EN-1 Paragraph 5.12.18 also states that the Secretary of State should consider putting in place requirements to ensure that noise levels do not exceed the limits specified in the ES.
- 4.76. ES Volume 6, Part 3, Chapter 9: Airborne Noise and Vibration [APP-091] (Table 9.32), for instance, identifies a collective total of 170 noise sensitive receptors that would be exposed to 'high' magnitudes of noise impacts during the different construction activities as part of constructing the onshore ECC. Furthermore, the effect from (unmitigated) onshore ECC construction noise impacts are assessed by the Applicant (Table 9.55) as major adverse, reducing to no significant adverse residual effects with the application of mitigation measures. On 11 July 2025 the Secretary of State asked the Applicant to revise the CoCP, in accordance with BS 5228, to require continuous noise monitoring during construction to ensure that the noise level limits committed to are complied with, with the locations and reporting of such monitoring to be agreed with the relevant planning authorities.

- 4.77. On 8 August 2025, the Applicant stated that it considers that noise monitoring, continuous or otherwise, is not a mandatory requirement of BS 5228. However, on 28 August 2025 it confirmed that it had revised section 4.3 of the CoCP to require noise monitoring to check compliance with the noise levels committed to during the construction phase. The Applicant notes the locations, type, durations and reporting of monitoring are to be agreed with the discharging authority. Noting the amendments made, the Secretary of State considers that this matter has now been resolved.
- 4.78. Following the above, the Secretary of State has amended the Order regarding the requirement for control of noise during operational stage [requirement 15], to ensure the noise investigation protocol must set out a process for the investigation of cumulative operational noise. It has also been amended to include provision that within twelve months of commencement of operation of Work No. 15B, the undertaker must carry out noise evaluations at the listed noise sensitive locations and submit the results to the relevant discharging authority, and if the noise rating levels are found to be exceeded, the undertaker must provide details of further noise monitoring and mitigation to that authority.

The Secretary of State's Conclusions

- 4.79. Noting the Applicant's responses to the information requests, and the amendments to the Order and CoCP, the Secretary of State agrees with the ExA's conclusion [ER 5.5.30] that little negative weight should be ascribed to matters related to air quality and effects from airborne noise and vibration in the overall planning balance.

Onshore ecology and biodiversity

- 4.80. The Applicant assessments found there will be the loss of habitat including 1.16km of hedgerow, 39.82ha of arable habitat, and 1.26ha of grazing marsh and modified grassland [ER 5.6.19-23]. For plant species, the Applicant finds that during construction there will be temporary significant adverse impacts, and with mitigation not significant mid-term [ER 5.6.33]. For invertebrates, impacts would be temporarily significant adverse, and with mitigation not significant mid-term [ER 5.6.33]. For breeding birds, the impacts are permanent, and no mitigation is assessed to be possible, resulting in the loss of up to six corn bunting territories and 21 skylark territories, giving rise to a significant adverse effect [ER 5.6.33]. The largest impact regarding cumulative impacts was for breeding birds, as there would be loss of habitat during construction, and there would be a significant negative effect in relation to corn bunting and skylark [ER 5.6.35].
- 4.81. The ExA considers there would be potential for currently unquantifiable harm to be caused to bats [ER 5.6.69] but in all other regards, the ExA is content that the Proposed Development would not give rise to unacceptable harm to onshore ecology [ER 5.6.69]. The Applicant has committed to carrying out pre-construction surveys of habitats and species, and the ExA considers that those surveys would inform appropriate mitigation measures, and that there would be no residual adverse effects [ER 5.6.56]. The ExA notes that the loss of arable habitat at the OnSS site would be locally significant, however the Applicant is proposing the creation of new habitats [ER 5.6.65]. The Applicant proposes to deliver 10% Biodiversity Net Gain ("BNG") [ER 5.6.27] and the ExA notes that, should the Applicant achieve a 10% BNG, the matter of habitat loss and creation there would be no adverse residual effects [ER 5.6.66]. The Secretary of State considers ecology and biodiversity matters in further detail below.

- 4.82. Overall, the ExA concludes that the Proposed Development would accord with the relevant policy in the NPS's and considers that effects on onshore ecology are neutral in the planning balance [ER 5.6.69].

Definition of Impact Duration

- 4.83. At the close of the Examination, an outstanding material disagreement remained between NE and the Applicant in the NE Risk and Issues Log [REP8A-053] (Point 2 in J – Onshore Ecology). NE consider that the Applicant's ES 6.3.4 Onshore Biodiversity and Nature Conservation [APP-086] defines impact duration arbitrarily without reference to the lifecycle of relevant species, for example short-term is defined as <5 years. NE's view is that this definition is not in line with the CIEEM Guidelines for Ecological Impact Assessment in the UK and Ireland (2024) and potentially underestimates impacts on species with short lifecycles (for example, invertebrates and plants). On 11 July 2025, the Secretary of State asked the Applicant to revise the ES to update the definition of duration in line with the CIEEM Guidelines. On 8 August 2025, the Applicant stated that as set out in the 'Applicant's Response to NE's RR [REP1-051], the time frames referenced in ES 6.3.4 are explicitly unrelated to protected species or habitats life cycles, and they are provided simply to add context for how long an effect may last, irrespective of how time relates to the ecological feature experiencing it. The Applicant therefore did not revise the ES, but confirmed that the assessment has been undertaken in accordance with the CIEEM Guidelines for Ecological Impact Assessment in the UK and Ireland.
- 4.84. On 21 August 2025, the Secretary of State asked the Applicant to revise the ES to update the definition of duration as the Applicant had not sufficiently evidenced why it had not revised the ES. On 5 September 2025, the Applicant stated that with respect to invertebrates of conservation concern, these are primarily associated with habitats adjacent to the coast or to the Holland Brook, hedgerows and ancient or semi-natural woodland. The extent of temporary loss to these habitats is relatively small and the proportion of any important invertebrate population affected would therefore be small. The assessment of a potentially significant effect until the proposed mitigation has become established is therefore considered valid. With respect to other protected and notable faunal species, following the implementation of proposed mitigation measures, no significant residual effects are predicted at any timescale. This conclusion would not change following further consideration of the life cycle of the species assessed. The Applicant notes the ES chapter has been revised to provide additional clarity, and when referencing time periods now uses numbers of years only.
- 4.85. On 26 September 2025, the Secretary of State asked NE to confirm whether the amendments made by the Applicant resolves the outstanding concern. On 10 October 2025, NE stated that it considers that this matter is resolved, and the mitigation measures within the oLEMP are in line with best practice guidance. The Secretary of State considers this matter resolved.

Detailed Environmental Risk Assessments for Frac-Out at SSSI

- 4.86. At the close of the Examination, an outstanding disagreement remained between NE and the Applicant, in the NE Risk and Issues Log [REP8A-053] (Point 20 in J – Onshore Ecology). NE considered that there was insufficient assessment of the potential risks of bentonite frac-out at the Holland Haven Marshes SSSI ("Site of special scientific interest") [ER 5.6.41].

- 4.87. On 11 July 2025, the Secretary of State asked the Applicant to revise the CoCP to require a detailed environmental risk assessment, and drafting to secure this within the Order. On 8 August 2025, the Applicant provided an updated section 4.5 of the CoCP to include a commitment to undertaking a detailed environmental risk assessment. The Applicant considers that a requirement in the Order is not necessary. However, the Applicant did provide some draft wording for a requirement entitled 'Landfall drilling risk assessment'.
- 4.88. On 21 August 2025, the Secretary of State asked NE, the EA, and ECC to comment on the draft requirement wording provided by the Applicant. On 5 September 2025, NE stated that whilst its preference would be for the landfall drilling risk assessment to be submitted to inform consent rather than as a requirement after consent it was content with the proposed wording. On 10 September, ECC and TDC confirmed that they have no further comments.
- 4.89. The Secretary of State has included the requirement [requirement 24] provided by the Applicant in the Order to ensure that the features of the Holland Haven Marshes SSSI are protected against potential risks from bentonite frac-out. On that basis, the Secretary of State considers this matter is resolved.

Submission of Onshore Monitoring Data

- 4.90. The oLEMP [REP8A-017] does not include detail relating to data-sharing. The submission of monitoring data to the relevant Local Environmental Records Centres, is required by NPS EN-3 Paragraph 2.8.86. The submission of data enables the effects of the development and the efficacy of associated surveying/mitigation to be documented and contribute to the evidence base for better decision making. On 11 July 2025, the Secretary of State asked the Applicant to revise the CoCP and the oLEMP to ensure onshore environmental survey and monitoring data is shared. On 8 August 2025, the Applicant stated that it has updated the oLEMP to address this request and that as all ecological and biodiversity data will be collected under the oLEMP it is the appropriate place to secure this commitment, and has therefore not updated the CoCP. The Secretary of State considers this matter resolved.

oLEMP Adaptive Management, Compliance and Local Authority Reporting

- 4.91. The oLEMP contained no course of action to be taken where mitigation/compensatory habitats and features fail to establish or reach the intended condition, and no detail as to compliance monitoring and reporting to the relevant local planning authority ("LPA"). NPS EN-1 4.2.12 states that applicants should set out how any mitigation or compensation measures will be monitored and reporting agreed to ensure success, and that action is taken if those measures fail. On 11 July 2025, the Secretary of State asked the Applicant to amend the oLEMP to include an outline methodology to be implemented in the event of failure and include a compliance assessment and reporting methodology. On 8 August 2025, the Applicant stated the revised oLEMP has been revised accordingly in section 10.4. The Secretary of State considers this matter resolved.

Badger Species Protection Plan

- 4.92. The ExA is content with the Applicant's assessment that the impacts on badgers are temporary and with mitigation not significant [ER 5.6.33]. The ExA is content that the Applicant has included commitments within the CoCP and the oLEMP to carry out pre-construction surveys and implement mitigation during construction and reinstatement [ER 5.6.57]. The Preliminary Ecological Appraisal [APP-153 – APP-155] records the area as

being one of high badger activity recorded within the Order Limits and on the red-line boundary. However, there are few outline controls within the CoCP and oLEMP to ensure that badger setts will be retained and protected from disturbance, outside of a licence which the Applicant does not currently intend to apply for. Badgers and badger setts are afforded protection through the Protection of Badgers Act 1992 and the Wildlife and Countryside Act 1981 and as such the Secretary of State considers a Badger Species Protection Plan ("BSPP") may be required. The BSPP should include measures from SNCB standing advice on the protection of badgers during construction works. This is supported by NPS EN-1 paragraph 5.4.35 which states that applicants should include appropriate avoidance, mitigation, compensation and enhancement measures as an integral part of the Proposed Development, particularly demonstrating that mitigation required as a result of legal protection of habitats or species will be complied with.

- 4.93. On 11 July 2025, the Secretary of State asked the Applicant to revise the CoCP and oLEMP. On 8 August 2025, the Applicant stated no significant impacts to badgers are anticipated however, a commitment to a BSPP, should any impacts to badgers be identified, has been included in the oLEMP. The Secretary of State considers this matter resolved.

Otter and Water Vole Avoidance and Mitigation Measures

- 4.94. The Applicant sets out avoidance and mitigation measures to avoid impacts from construction on the protected species of otters and water vole, in the oLEMP. However, these are not reflected in the CoCP, which is the control document for the construction phase when the assessed impacts will likely occur. The Applicant is required to have the measures reflected in the CoCP to ensure that impacts to protected species are avoided and mitigated against, as supported by NPS EN-1 paragraph 5.4.35. On 11 July 2025, the Secretary of State asked the Applicant to revise the CoCP. On 8 August 2025, the Applicant provided an updated version of the CoCP accordingly. The Secretary of State considers this matter resolved.

Permanent Fencing and Animal Movement

- 4.95. The Applicant's fencing design did not incorporate consideration for animal movement in and out of the proposed ecological enhancement area. Permanent fencing should be designed in a way that ensures animals can pass through to prevent habitat fragmentation and the associated negative population-level effects. This is supported by NPS EN-3 paragraph 3.10.74 which states that the construction and design of any fencing should account for enabling mammal, reptile and other fauna movement and connectivity. On 11 July 2025, the Secretary of State asked the Applicant to revise the oLEMP. On 8 August 2025, the Applicant stated permanent security fencing around the OnSS compound is necessary for health, safety and security reasons. However, it confirmed that permanent fencing at the wider OnSS ecological enhancement area will be minimised as far as practicable and will be permeable for mammals, including badgers, where appropriate. The Applicant updated the oLEMP with its response. The Secretary of State has accepted the Applicant's explanation and considers this matter resolved.

Onshore Species Monitoring

- 4.96. The oLEMP did not include any onshore species monitoring of the actual impacts versus the predicted impacts and to detect any actual impacts that are significantly beyond those predictions. The monitoring of ecological impacts is required by NPS EN-1 (paragraph

4.2.12) and EN-3 (paragraph 2.8.83 & 2.8.221), CIEEM Guidelines (2024), and BS 42020:2013 (Biodiversity – Code of practice for planning and development). On 11 July 2025, the Secretary of State asked the Applicant to revise the oLEMP. On 8 August 2025, the Applicant stated it has revised the oLEMP to set out the compliance assessment process which provides for species or feature specific monitoring assessing the effectiveness of mitigation / compensation, and additional mitigation or management measures if needed. The Secretary of State considers this matter resolved.

Farmland Bird Compensation Plan

- 4.97. ES 6.3.4 [APP-086] details that the permanent loss of arable habitat due to the construction of the OnSS and proposed landscaping / habitat creation will affect up to six corn bunting territories and 21 skylark territories, which the Applicant notes as significant adverse effect [ER 5.6.33]. While the Applicant notes that compensation for skylark and corn bunting is not possible within the Order Limits, there is no evidence that off-site habitat compensation cannot be provided and, therefore, the full application of the mitigation hierarchy has not been explored. NPS EN-3 paragraph 2.1.8 emphasises that applicants must show how any significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy. Additionally, both corn bunting and skylark have experienced significant recent declines and are listed as 'Red' (the highest level of conservation concern) in the latest Birds of Conservation Concern, and both species are listed under Section 41 of the Natural Environment and Rural Communities Act 2006 ('NERC Act') as 'Species of Principal Importance', for which the Secretary of State has a legal duty to conserve and enhance their status. It should also be noted that under the Environment Improvement Plan 2023 and The Environmental Targets (Biodiversity) (England) Regulations 2023, there is both a policy and legal commitment to halt the decline in species abundance.
- 4.98. On 11 July 2025, the Secretary of State asked the Applicant to provide a Farmland Bird Compensation Plan detailing how off-site habitat compensation would be delivered to compensate for the significant adverse effect on corn bunting and skylark, and to comment on wording for a requirement. On 8 August 2025, the Applicant stated it considers that the plan sought by the Secretary of State is not appropriate compensation as it is not deliverable without creating unjustified long term impacts elsewhere. The Applicant noted it has considered the provision of both mitigation and compensation pre-application and followed the mitigation hierarchy. Provision of offsite compensation was considered by the Applicant, however it was concluded that the impacts of providing this outweighed the impact being addressed. The Applicant notes all of the measures will require significant adjustments to farming practices and will have an impact on agricultural businesses and impact on best and most versatile land and food production. The Applicant considers it could only deliver offsite compensation with the co-operation of willing landowners and would in effect be in a ransom position if none were willing to enter into voluntary agreements. The Applicant's position is that this creates an unnecessary risk to the viability and deliverability of the project. The Applicant considers a requirement is not needed, but included some wording nonetheless.
- 4.99. On 21 August 2025, the Secretary of State asked the Applicant, NE, and ECC to provide comments on wording for a potential requirement. On 5 September 2025, NE stated that it would defer to other IPs. On 10 September 2025, the joint response from ECC and TDC stated that the Councils have no objection to a requirement. On 5 September 2025, the Applicant stated it has already provided justification setting out that the requirement is not appropriate and its imposition would create an unnecessary risk to the viability of the

Proposed Development. The Applicant suggested amendments to the draft wording of the requirement. While the Secretary of State acknowledges the concerns of the Applicant, the Applicant has provided no evidence of the risk to the viability and deliverability of the Proposed Development, and he considers that with appropriate, well-planned implementation of the compensation measures, the impacts to agricultural business and food production would be minimal and not outweigh the benefits of compensation. The Secretary of State also notes that habitat for skylark is regularly implemented on farmland across the UK through DEFRA's Sustainable Farming Incentive and notes that other, comparatively smaller developments in proximity to the Proposed Development (as outlined in Table 4.20 of ES 6.3.4 Onshore Biodiversity and Nature Conservation) have included compensation areas for skylarks and other farmland birds as part of their respective planning applications. As such, and in acknowledging the legal duties and policy commitments to conserve and enhance the status of corn bunting and skylark, the Secretary of State considers that a requirement for a farmland bird compensation plan is needed and proportionate to the significant adverse effects predicted. The Secretary of State welcomes the draft wording for the requirement provided by the Applicant and the Councils and has included an amended version of these within the Order [Requirement 25]. With the inclusion of this requirement, responsibilities under Section 40 in respect of species under Section 41 of the NERC Act have been met, as well as the duties within the Environment Improvement Plan 2023 and The Environmental Targets Regulations 2023. The Secretary of State considers this matter resolved.

Migratory Bat monitoring

- 4.100. The ExA concludes that there would be potential for currently unquantifiable harm to bats [ER 5.6.69], however the ExA does not consider that potential harm to be of such significance to warrant the withholding of consent for the Proposed Development [ER 5.6.69]. The Applicant states the number of migratory bats flying through the proposed array areas is unknown [ER 5.6.58]. The ExA notes that migratory bats are not qualifying features of any designated European site, however, effects on an individual protected species cannot be ruled out [ER 5.6.58]. The ExA notes that, to assist in the understanding of the movement of bats, the Applicant updated the OIPMP to implement bat monitoring [ER 5.6.60]. Although the updated OIPMP is secured via the DML, the ExA considered that bat monitoring should be secured via requirement 23, which has been added to the draft Order [ER 5.6.62].
- 4.101. The Secretary of State has amended the wording of the requirement [now requirement 23] to provide further clarity as to the post-consent discharge process and to include further details of what the migratory bat monitoring should include, the consultation required, and the need to make the collected data and monitoring reports publicly available. Following the changes made to the requirement, the Secretary of State is content that migratory bat monitoring is sufficiently secured within the Order. The Secretary of State considers this matter resolved.

Raptor perching posts, beetle loggeries, and rubble piles

- 4.102. Noting NPS EN-1 paragraphs 5.4.46-47 which state that the Secretary of State should maximise reasonable opportunities for building-in beneficial biodiversity features in and around developments, on 11 July 2025, the Secretary of State asked the Applicant to revise the oLEMP to provide for raptor perching posts, beetle loggeries, and rubble piles, and provide indicative locations for these. On 8 August 2025, the Applicant stated the oLEMP details species specific compensation and enhancement including the proposal to install a

range of bird boxes on retained trees, earth banks for invertebrates, refugia for reptiles, amphibians and small mammals. The Applicant notes that beetle loggeries and rubble piles are considered synonymous with the 'refugia' already mentioned. The Applicant notes inclusion of "raptor perching posts" as an enhancement is not considered appropriate, given the greater need to minimise impacts to ground nesting birds. The Applicant has updated the oLEMP to confirm that site won material will be used where possible. The Secretary of State welcomes the clarifications provided by the Applicant and considers this matter resolved.

Felling of potential roost feature trees in winter months

4.103. On 26 September 2025, the Secretary of State asked the Applicant, in line with NE's response dated 5 September 2025, to revise Section 7.8.11 of the oLEMP to remove reference to the felling of potential roost feature trees in winter months. On 10 October 2025, the Applicant removed the reference as asked. The Applicant added additional text to clarify that the least sensitive period would be determined on a case-by-case basis. The Secretary of State considers this matter resolved.

Biodiversity Net Gain Option 1 and 2, and Requirement

4.104. The Applicant proposes to deliver 10% BNG [ER 5.6.27]. ExA notes that, should the Applicant achieve a 10% BNG there would be no adverse residual effects on habitat loss and creation [ER 5.6.66]. The Applicant presented two BNG options: Option 1 being "Unmanaged habitats counted as lost"; and Option 2 "Unmanaged habitats counted as lost and created" [ER 5.6.24]. At the close of the Examination, a number of outstanding disagreements remained between NE and the Applicant relating to BNG, as outlined in the NE Risk and Issues Log [REP8A-053] (Points 27 – 30 of J – Onshore Ecology). NE was concerned about securing a minimum 10% BNG through a requirement in the Order. NE considered Option 1 was the appropriate calculation approach to BNG as it is in line with the DEFRA Statutory Biodiversity Metric User Guide² where habitats contributing to BNG must be monitored and maintained for at least 30 years following the completion of the development [ER 5.6.25]. NE concerns are supported by NPS EN-1 paragraph 5.4.44 and NPS EN-3 paragraph 2.10.128. The Applicant considers Option 2 to be the most appropriate calculation approach [ER 5.6.24]. The Applicant's justification is based on NE's pre-application advice that BNG cannot be claimed for areas where habitat is lost and reinstated, unless the reinstated area is included in a 30 year management plan, which is the position under Option 1 [ER 5.6.25]. The Applicant also does not consider it reasonable that the reinstated hedgerows within the onshore export cable corridor ("OnECC") would be subject to more than 5-year aftercare and has included these into the Option 2 calculation [ER 5.6.26].

4.105. On 11 July 2025, the Secretary of State asked the Applicant to provide a version of the revised Onshore Biodiversity Net Gain Indicative Design Stage Report ("oBNGIDSR") [REP6-015] with Option 2 removed. The Secretary of State also asked the Applicant, ECC/TDC, and NE to provide comments on an amended BNG requirement.

4.106. On 8 August 2025, the Applicant noted that Option 2 is preferred and it did not revise the oBNGIDSR. The Applicant states it is not a requirement in any NSIP guidance for BNG to

² [Statutory biodiversity metric tools and guides - GOV.UK](https://www.gov.uk/guidance/statutory-biodiversity-metric-tools-and-guides)

be maintained for 30 years, as BNG is not yet mandatory. The Applicant notes NE concerns is mainly in relation to hedgerows and agricultural land used for haul roads or temporary construction compounds, and the Applicant considers these would not be able to be reinstated until other parts of the project are ready. The Applicant notes for much of the cable route, there will be no requirement for BNG as the land will be restored to agricultural land. This is something that is not currently captured in the BNG Statutory Biodiversity Metric calculations ("BNG Metric"), and this would pre-empt the outcome of the consultation run by DEFRA on BNG for NSIPs³ ["DEFRA consultation"]. Applying the BNG Metric in the manner would results in an undeliverable number of units. The Applicant notes that 30 years control over landowners would be unreasonable interference. The Applicant states that it objects to the inclusion of a requirement given that BNG is not statutory and it is therefore unjustified. Additional BNG units may be needed in addition to the landscaping and ecology works at the OnSS, however, the need or extent cannot be finalised until the landscaping and ecological mitigation has been designed (post-consent), and those changes added into the BNG metric. The BNG delivery strategy and assessment work is not set up to assess and deliver BNG in stages but rather assesses the overall impact of the whole development.

- 4.107. On 7 August 2025, NE recommended amendments to the requirement wording reflecting the approach that: "the biodiversity gain plan must set out how the biodiversity gain objective is expected to be met across the entire development, and how each phase is expected to contribute towards this". NE says this reflects current guidance and best practice and the recent DEFRA consultation. NE notes the DEFRA consultation recognises that there may be cases where the final details of the Biodiversity Gain Plan cannot be added until after consent is granted, and submitted to the relevant LPA for approval post-consent, such as the allocation of off-site gains. NE supports the prioritisation of local enhancements, in line with the BNG spatial hierarchy such as the Local Nature Recovery Strategy ("LNRS"). On 7 August 2025, ECC outlined their preference for gains higher than 10% to be pursued. ECC welcomed the wording of the requirement to secure a minimum 10% BNG and suggested changes such as removing the reference to submitting a BNG strategy in stages.
- 4.108. Noting the difference in requirement drafting between NE and ECC, on 21 August 2025, the Secretary of State asked them to provide final comments. On 5 September 2025, NE confirmed [C3-005] that the remit of the requirement drafting would fall to ECC as the discharging authority, and NE asked to be removed as a consultee. On 5 September 2025, in another response [C3-006], NE stated that they are awaiting formal guidance on how BNG will apply to NSIP schemes, and NE strongly encourage NSIPs to look at opportunities to deliver environmental enhancements. On 10 September 2025, in the joint response from ECC and TDC, the Councils suggest further amendments including that the BNG strategy is calculated using the DEFRA 4.0 biodiversity metric, but allowing flexibility if a later more appropriate version is available. The Councils also states the LNRS document does not need to be referenced. On 5 September 2025, the Applicant states that the oBNGIDSR already contains commitments in relation to the percentage of BNG, and BNG does not apply across the entire development (e.g. offshore works).
- 4.109. The Secretary of State has amended the wording of requirement 20 to reflect the comments received. The Secretary of State notes that the Applicant objects to the inclusion of a requirement given that BNG is not mandatory and its view is that it is therefore unjustified. However, the Secretary of State also notes paragraph 5.4.44 of NPS EN-1, which provides

³ [Biodiversity net gain for nationally significant infrastructure projects - GOV.UK](https://www.gov.uk/government/consultations/biodiversity-net-gain-for-nationally-significant-infrastructure-projects)

that he should consider “what appropriate requirements should be attached to any consent and/or in any planning obligations entered into, in order to ensure that any mitigation or biodiversity net gain measures, if offered, are delivered and maintained.” Paragraph 5.4.44 also states “Any habitat creation or enhancement delivered including linkages with existing habitats for compensation or biodiversity net gain should generally be maintained for a minimum period of 30 years, or for the lifetime of the project, if longer.” The Applicant has stated that a 10% BNG is achievable for the Proposed Development, and in order to secure this commitment the requirement has been included. The requirement relates to Work No. 15 and provides that the biodiversity metric to be used will be approved by the LPA rather than being prescribed at this stage, a position that is consistent with other recent DCOs. Given the final BNG strategy will need to be signed off by the LPA, the Secretary of State is content that the most appropriate BNG metric and calculation approach can be agreed at the post-consent stage taking into account any guidance that may be available at that point in time. The Secretary of State considers that BNG has been appropriately secured in the Order and considers this matter resolved.

Distinguishing Mitigation, Compensation, and BNG Land

- 4.110. The ExA notes the outcome of the evaluation of the BNG metric identified a shortfall in habitat creation [ER 5.6.52]. ECC confirmed that opportunities exist through its green infrastructure/habitat networks to provide BNG offsite [ER 5.6.55]. At the close of the Examination, an outstanding disagreement remained between NE and the Applicant, as outlined in NE’s RRs [PD2-012]. NE considered that the Applicant has not been transparent over which parcels of land are being delivered for mitigation/compensation and which are being used to contribute to BNG.
- 4.111. On 11 July 2025, the Secretary of State asked the Applicant to revise the oBNGIDSR [REP6-015] to show the relevant parcels of land clearly.
- 4.112. On 8 August 2025, the Applicant stated that Figure 4 of the oLEMP broadly indicates the parcels of land that are required for ecological compensation and enhancement. The Applicant states it is important to note that all non-operational areas at the OnSS/ within the oLEMP will provide a degree of mitigation, compensation and/ or enhancement for habitats and species. The Applicant notes it would be inappropriate/ inaccurate to allocate individual parcels of land for just one of these purposes and is worth highlighting that the BNG Metric does not require such discrimination. The Applicant has therefore not revised the oBNGIDSR.
- 4.113. The Secretary of State is content that the final BNG strategy that which will be submitted to the LPA will indicate the parcels of land marked for BNG purposes, and that the Applicant will be required to ensure a 10% BNG has been achieved. The Secretary of State therefore considers this matter resolved.

The Secretary of State’s Conclusions

- 4.114. The ExA concludes that the effects on onshore ecology and biodiversity are neutral in the planning balance. However, noting that there are some residual negative effects to habitats and species identified such as on invertebrates, hedgerows, grazing marsh, and arable habitats, the Secretary of State has ascribed little negative weight to these effects in the planning balance.

Flood risk and water quality

- 4.115. The EA published new data following an update to the National Flood Risk Assessment, and the Flood Map for Planning and flood zones were also updated on 25 March 2025. On 11 July 2025 the Secretary of State invited the Applicant to explain whether the updates have any implications for the conclusions of the ES 6.3.6 Hydrology, Hydrogeology, and Flood Risk [APP-088], the Flood Risk Assessment (“FRA”) – Onshore Export Cable Corridor [APP-038], and the FRA - Onshore Substation [APP-039], and to provide revised documents if deemed necessary.
- 4.116. On 8 August 2025, the Applicant confirmed that it has prepared a document titled 10.76 Technical Memo on Revised EA Flood Mapping Data which sets out a review of the latest EA data releases. The Technical Memo finds that there are no significant adverse changes to fluvial, tidal or surface water flood risks highlighted within the new data, and that the overall findings of the FRA reports would not change, and therefore, the Applicant has not amended the documents.
- 4.117. On 21 August 2025 the Secretary of State invited the EA and ECC to comment on the Applicant’s response. The EA responded 8 September 2025 confirming it is satisfied with the Applicant’s conclusion. ECC responded 10 September 2025 stating it has no further comments.
- 4.118. On 26 September 2025, the Secretary of State asked the Applicant to revise the CoCP to include the flood management and emergency response measures recommended by ECC, in line with ECC response dated 5 September 2025. On 10 October 2025, the Applicant made the requested changes.
- 4.119. The Secretary of State has noted the responses received and considers that this matter is resolved. The Secretary of State agrees with the ExA and ascribes neutral weight to matters relating to the water environment in the overall planning balance.

Historic environment

- 4.120. The ExA notes that there would be some impacts on some heritage assets, mainly during construction and some during the operational phase of the Proposed Development [ER 6.2.30]. The ExA notes that with the mitigation measures in place, to be subject to approval, through preservation by record or by retaining in situ, the effects would be reduced to a minor adverse effect and are not considered to result in significant residual effects [ER 6.2.30].
- 4.121. The ExA concludes that, in relation to both the onshore and offshore heritage assets, including archaeology, the Proposed Development accords with the relevant policy included in NPSs EN-1, NPS EN-3 and NPS EN-5, as well as meeting the statutory requirements of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 which require regard is paid to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess [ER 6.2.33]. The ExA considers the Proposed Development would also meet the requirements of policies SE-HER-1 of the South East Inshore Marine Plan, and Policy SOC2 of the East Inshore and East Offshore Marine Plans [ER 6.2.33].
- 4.122. The ExA concludes that there would be less than substantial harm arising from the Proposed Development in relation to the designated heritage assets [ER 6.2.34]. The ExA notes they

have had regard to the temporary nature of the impacts on the historic environment, and the proposed further investigations and mitigation measures that would be secured in any made Order for the Proposed Development [ER 6.2.34].

- 4.123. The ExA conclude that the very great weight to be attached to the need for the proposed development outweighs the negative effects caused, and in doing so the ExA is content that the regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and NPPF paragraph 208 tests with respect to heritage assets and the public benefits test have been discharged [ER 11.2.2].
- 4.124. Whilst the Secretary of State agrees with the majority of the ExA's conclusions in relation to the historic environment, the Secretary of State does not agree that preservation by record is a form of mitigation for heritage assets. The Secretary of State disagrees that the investigation, recording, and dissemination of the removal of archaeological remains in some way, mitigates harm to archaeological features. Such steps are required as best practice measures but do not amount to mitigation of harm.

The Secretary of State's Conclusions

- 4.125. Subject to the considerations of paragraph 4.124 above and 4.126 below, the Secretary of State agrees with the ExA that there is less than substantial harm to heritage assets and, as such, paragraph 5.9.32 of NPS EN-1 and NPPF paragraph 215 must be applied. The Secretary of State agrees with the ExA that the adverse effects of the Proposed Development do not outweigh its benefits and that paragraph 5.9.32 of NPS EN-1 and NPPF paragraph 215 is satisfied. The Secretary of State agrees with the ExA that the public benefits outweigh the identified less than substantial harm to heritage assets, taken both individually and cumulatively.
- 4.126. The Secretary of State considers preservation by record does not amount to mitigation of harm for archaeological remains and disagrees with the ExA's conclusions that little negative weight should be ascribed to the historic environment. The Secretary of State considers that a little negative weighting, ascribed on the basis of preservation by record as a mitigation measure, understates the severity of potential harm to heritage assets and therefore, has amended the weighting to moderate negative weight in the overall planning balance.

Good design

- 4.127. Notwithstanding the aspects of the Proposed Development for which the ExA considers the Applicant has demonstrated good design, the ExA had concerns in relation to the design for the proposed OnSS and the wider OnSS zone. The ExA considers that the collaboration with the proposed NFOWF has not been effective, given the two projects have included different proposals for the entirety of OnSS zone in their respective applications. It also considers the evidence it sought from the Applicant during the Examination demonstrates that it was only partially engaged in the independent design review process prior to the submission of its application and it has sought to address that deficiency belatedly by committing to the preparation of a design guide, informed by independent review, post consent. Accordingly, the ExA does not consider good design has been embedded from the outset within the Applicant's proposals for the OnSS and in that regard it considers that there is little demonstration of compliance with paragraph 4.7.5 of NPS EN-1 [ER 6.6.31].

- 4.128. Although the Applicant has committed to preparing a design guide, which would be subject to an independent design review under the provisions of Requirement 5(2) of the draft Order [REP8A-004], the ExA considers that mechanism falls short of what would be necessary to achieve good design for such a significant element of the proposed onshore works. In the ExA's recommended Order it therefore amended the wording for Requirement 5 to secure the undertaking of an independent design review [ER 6.6.32]. The amended wording ensures that design details submitted under Requirement 5 will have first been reviewed and written recommendations made by an independent design review panel to the undertaker prior to submission to the discharging authority for approval.
- 4.129. With respect to good design, the ExA considers that the Applicant has gone some way to meeting the requirements of the NPS EN-1 in taking into account both the functionality and aesthetics of the Proposed Development as far as possible through the evolution of the design process. The ExA ascribes the matter of good design moderate negative weight in the planning balance [ER 6.6.34].
- 4.130. In the first information request the Secretary of State requested an update from the Applicant, NFOWF and NGET on their respective substations and EACN design and landscaping. The Applicant responded on behalf of all three parties. It confirmed that the three projects have committed to producing a Joint Design Guide ("JDG"). Production of the JDG started in May 2025 and is expected to be completed by December 2025. The Applicant confirmed that the JDG has been developed based on the Applicant's wider screening proposals to the south-east of the OnSS, which aligns the two projects' (the Proposed Development and NFOWF) proposals. In terms of the substations themselves, the JDG will ensure a coherence of design between the two projects (the Proposed Development and NFOWF), such as in terms of identification of colour palettes and fencing types. In addition, in a separate response to the first information request, NGET confirmed the landscape proposals for the EACN would take into account and complement the landscape proposals for the proposed onshore substations of the Proposed Development and NFOWF, and that it will engage with the JDG process as a key stakeholder. NGET also noted that the landscape proposals would be subject to detailed design post consent.

The Secretary of State's Conclusions

- 4.131. The Secretary of State concludes that the ExA's recommended amendments to Requirement 5 are necessary. The Secretary of State has noted the updates provided by the Applicant in the first information request in respect of the preparation and progress of the JDG, and that the Applicant and NFOWF are engaging in an independent review process of the JDG, that is being undertaken by the Essex Quality Review Panel ("EQRP"). Any recommendations received from the EQRP must accompany the details of the OnSS (subject of Work No. 15B) submitted to the discharging authority for approval under the provisions of Requirement 5(1) of the Order.
- 4.132. The Secretary of State has also included additional wording to further strengthen Requirement 5 to ensure to ensure cohesion between the three projects, (the Proposed Development, NFOWF and EACN), requiring hard and soft landscape works and detailed planting plans to an appropriate scale as detailed at paragraph 4.7.3 of the OnSS Design Principles Document [REP8-020] to be submitted for approval.
- 4.133. The Secretary of State considers that the independent review of the JDG and the addition of detailed landscaping plans secured as part of Requirement 5 will contribute to facilitating and

securing a cohesive design approach between the three schemes that the ExA identified was lacking. The Secretary of State agrees with the ExA and ascribes the matter of good design moderate negative weight in the planning balance.

5. Habitats Regulations Assessment

- 5.1. The Secretary of State's Habitats Regulations Assessment ("HRA") is published alongside this letter. The paragraphs below summarise the key conclusions of, and must be read alongside, the HRA, which sets out in full the Secretary of State's detailed consideration of these matters.
- 5.2. The Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation ("SACs"). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together form part of the UK's National Site Network ("NSN").
- 5.3. The Convention on Wetlands of International Importance 1972 provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as "protected sites").
- 5.4. Regulation 63 of the Habitats Regulations provides that: *"....before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."* And that: *"In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."*
- 5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as the Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects ("LSE") cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the protected site in view of its Conservation Objectives.
- 5.6. Where an adverse effects on integrity ("AEol") of the site cannot be ruled out beyond all reasonable scientific doubt, regulations 64 and 68 of the Habitats Regulations provide for the possibility of a derogation which allows such plans or projects to be approved provided three tests are met:

- There are no feasible alternative solutions to the plan or project which are less damaging to protected sites;
 - There are imperative reasons of overriding public interest (“IROPI”) for the plan or project to proceed; and
 - Compensatory measures are secured to ensure that the overall coherence of the NSN is maintained.
- 5.7. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites unless the Secretary of State chooses to continue to consider the derogation tests as above. The complete process of assessment is commonly referred to as a HRA.
- 5.8. The Secretary of State considers that the Proposed Development has the potential to have an LSE on 109 protected sites when considered alone and in-combination with other plans or projects.
- 5.9. The Secretary of State has undertaken an AA in respect of the Conservation Objectives of the sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects, will result in an AEol of the identified protected sites. The Secretary of State has considered all information available to him including the recommendations of the ExA, the advice of NE as the SNCB, the views of all other IPs, the Applicant’s case, and all responses to his consultation letters.

Appropriate Assessment conclusion

- 5.10. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of the protected sites and where relevant, the measures in place to avoid or reduce potential adverse effects secured in the DCO and DML, there would not be any implications for the achievement of site conservation objectives and therefore AEol can be excluded beyond reasonable scientific doubt for the majority of protected sites for which LSE cannot be excluded.
- 5.11. However, the Secretary of State concludes that an AEol cannot be ruled out beyond scientific doubt in relation to:
- Collision mortality of the kittiwake feature of the Flamborough and Filey Coast SPA, in-combination with other plans or projects;
 - Displacement and disturbance of the guillemot feature of the Flamborough and Filey Coast SPA, in-combination with other plans or projects;
 - Displacement and disturbance of the guillemot feature of the Farne Islands SPA, in-combination with other plans and projects.
 - Collision mortality of the lesser black-backed gull feature of the Alde-Ore Estuary SPA and Ramsar site, in-combination with other plans and projects.
 - Physical habitat loss of the sandbanks which are slightly covered by seawater all the time feature of the Margate and Long Sands SAC, alone and in-combination with other plans and projects.
- 5.12. The Secretary of State has not identified any further mitigation measures that could reasonably be imposed which would avoid or mitigate the potential AEol identified and has therefore proceeded to consider the derogation provisions of the Habitats Regulations.

Derogation Provisions

- 5.13. The Secretary of State has considered the Proposed Development in the context of Regulations 64 and 68 of the Habitats Regulations to determine whether it can be consented. Consent may only be given under the Habitats Regulations where no alternative solutions to the project are available which meet the project objectives and are less damaging to the affected protected site, where there is IROPI, and where Regulation 68 (compensatory measures) is satisfied. Regulation 64 allows for the consenting of a project even though it would cause an AEoI of a protected site if it is required for IROPI. Regulation 68 of the Habitats Regulations requires the appropriate authority to secure any necessary compensatory measures to ensure that the overall coherence of NSN is protected.
- 5.14. In accordance with relevant guidance, the Secretary of State reviewed the Proposed Development following a sequential process, considering:
- Alternative solutions to the Proposed Development that have been sought;
 - Whether there are IROPI for the Proposed Development to proceed; and
 - Compensation measures proposed by the Applicant for ensuring that the overall coherence of the NSN is protected.

Alternative Solutions

- 5.15. The objectives for the Proposed Development as set out by the Applicant, are:
- To generate low carbon electricity from an OWF in support of the decarbonisation of the UK electricity supply;
 - To export electricity to the UK National Grid to support UK commitments for offshore wind generation and security of supply;
 - To optimise generation and export capacity within the constraints of available (UK) sites and onshore transmission infrastructure; and
 - To deliver a significant volume of (UK) offshore wind before 2030.
- 5.16. As set out in the HRA, the Secretary of State does not consider that the development of alternative forms of energy generation would meet the objectives for the Proposed Development. Alternatives to the Proposed Development considered by the Secretary of State are consequently limited to either “do nothing” or alternative offshore windfarm projects.
- 5.17. Following a review of the information submitted by the Applicant and the recommendation of the ExA and having identified the objectives of the Project and considered all alternative solutions to fulfil these objectives, the Secretary of State is satisfied that no feasible alternative solutions are available that would meet the Project objectives with an appreciable reduction in predicted impacts on protected sites.

Imperative Reasons of Overriding Public Interest

- 5.18. A development having an AEoI on a protected site may only proceed (subject to a positive conclusion on alternatives and provision of any necessary compensation) if the project must be carried out for IROPI. The Secretary of State has therefore considered whether the Proposed Development is required for IROPI.

- 5.19. As set out in the HRA, the Secretary of State agrees with the ExA and the Applicant that imperative reasons in the public interest for the Project to proceed are clearly established, especially the contribution it would make towards renewable electricity generation and ensuring the security of electricity supply from a domestically generated source. The Secretary of State also considers that such imperative and long-term need in the public interest for the Project clearly outweighs the predicted harm to the integrity of the protected sites.

Compensatory Measures

- 5.20. In relation to kittiwake, the Applicant submitted a package of compensatory measures for the kittiwake feature of the FFC SPA. This includes either a provision of a monetary contribution to strategic compensation through the Marine Recovery Fund, or through collaborating with other offshore wind farms to provide nesting spaces for kittiwake at an artificial nesting structure. The Secretary of State is satisfied that the necessary compensatory measures can be secured and delivered to protect the coherence of the UK NSN for kittiwake as required by Regulations 29 and 36 of the Offshore Habitats Regulations and Regulations 64 and 68 of the Habitats Regulations. Having made amendments, he considers that Part 2 of Schedule 13 adequately secures the further work required to progress the proposed compensatory measures.
- 5.21. In relation to guillemot, the Applicant submitted a package of compensatory measures for the guillemot feature of the FFC SPA and Farne Islands SPA. This includes either a provision of a monetary contribution to strategic compensation through the Marine Recovery Fund, or through reducing recreational disturbance of guillemot at selected colony sites by implementing measures such as restrictions of boat approach distances and/or funding for wardens. The Secretary of State is satisfied that the necessary compensatory measures can be secured and delivered to protect the coherence of the UK NSN for guillemot as required by Regulations 29 and 36 of the Offshore Habitats Regulations and Regulations 64 and 68 of the Habitats Regulations. Having made amendments, he considers that Part 3 of Schedule 13 adequately secures the further work required to progress the proposed compensatory measures.
- 5.22. In relation to lesser black-backed gulls, the Applicant submitted a package of compensatory measures for the lesser black-backed gull feature of the Alde-Ore Estuary SPA and Ramsar site. This includes either the installation of predator-proof fencing and habitat restoration at Orford Ness or predator eradication and habitat management at Outer Trail Bank. The Secretary of State is satisfied that the necessary compensatory measures can be secured and delivered to protect the coherence of the UK NSN for lesser black-backed gull as required by Regulations 29 and 36 of the Offshore Habitats Regulations and Regulations 64 and 68 of the Habitats Regulations. Having made amendments, he considers that Part 1 of Schedule 13 adequately secures the further work required to progress the proposed compensatory measures.
- 5.23. In relation to sandbanks, the Applicant submitted a package of compensatory measures for the sandbanks which are slightly covered by seawater all the time feature of the Margate and Long Sands SAC. The Secretary of State determined that only the provision of a monetary contribution to strategic compensation through the Marine Recovery Fund can be relied upon as a compensatory measure. The Secretary of State is satisfied that this can be secured and delivered to protect the coherence of the UK NSN for sandbanks as required by Regulations 29 and 36 of the Offshore Habitats Regulations and Regulations 64 and 68

of the Habitats Regulations. Having made amendments, he considers that Part 4 of Schedule 13 adequately secures the further work required to progress the proposed compensatory measure.

The Secretary of State's Conclusion on the HRA

- 5.24. An AEoI on the Flamborough and Filey Coast SPA, Farne Islands SPA, Alde-Ore Estuary SPA and Ramsar site, and Margate and Long Sands SAC cannot be excluded beyond reasonable scientific doubt. There are no feasible alternative solutions that would meet the objectives of the Proposed Development with an appreciable reduction in impacts on the NSN sites. There are clearly imperative reasons in the public interest for the Proposed Development to proceed despite the predicted harm to the UK NSN. The Secretary of State is satisfied that a package of compensatory measures to ensure that the overall coherence of the UK NSN is maintained can be secured and delivered with regard to kittiwake and guillemot of the Flamborough and Filey Coast SPA, guillemot of the Farne Islands SPA, lesser black-backed gull of the Alde-Ore Estuary SPA and Ramsar site, and sandbanks which are slightly covered by seawater all the time of the Margate and Long Sands SAC.

6. Compulsory Acquisition and Land Rights

6.1. The ExA recommends [ER 9.10.1]:

- The exclusion of TP and CA powers from the part of Plot 17-024 to the east of Norman's Farm intended for screen planting works in any made Order and the Applicant's submission of revised versions of Sheet 18 in the Onshore Land Plans and the Book of Reference ("BoR") to reflect Plot 17-024's partial removal from the land rights power sought;
- The exclusion of TP and CA powers from the entirety of Plots 17-015, 17-016, 17-017, 17-018, 18-001 and 18-002 in any made Order, in line with the changes included in the recommended Order, and the Applicant's submission of revised versions of Sheet 18 in the Onshore Land Plans and the BoR to reflect the removal of the previously mentioned plots from the land rights powers sought;
- The exclusion of the entirety of Plot 17-031 from the acquisition of the rights sought, unless it can be demonstrated to the Secretary of State's satisfaction that there is either no alternative mechanism to the CA of rights for securing a connection between the proposed OnSS and the EACN site or it would currently be impossible to reduce the powers sought within Plot 17-031 to a more proportionate extent;
- The exclusion of the entirety of Plots 16-022 and 17-005 from the TP powers sought in any made Order, in line with the changes included in the recommended Order, and the Applicant's submission of revised versions of Sheet 17 in the Onshore Land Plans and the BoR to reflect the removal of Plots 16-022 and 17-005 from the TP powers sought;
- Obtaining clarification from the Applicant and the Crown Estate about what consent, if any, is required under s135 of PA2008 from the Crown Estate with respect to the Applicant's proposals for new rights creation in respect of Plots 19-001, 19-002, 19-003 and 20-003;
- In respect of Plot 19-001 (land at Orford Ness), pursuant to the submissions made by the Applicant in [AS-075]:
 - obtain from the Applicant revised versions of Sheet 19 in the Onshore Land Plans and the BoR removing Plot 19-001 from the CA powers being sought;

- following the removal of Plot 19-001 from the Onshore Land Plans and BoR, seek clarification from the National Trust (“NT”) as to whether it wishes to maintain or withdraw its objection to the Applicant’s request for CA powers;
- the CA powers included in the ExA’s Recommended Order (including the versions of Protective Provisions) (“PP”) should be authorised (unless alternative PPs have been agreed and submitted for consideration since the Examination’s close), subject to clarifications from the Crown Estate and the NT being received;
- the TP powers included in the ExA’s Recommended Order should be authorised;
- the authorisation of the CA powers in respect of statutory undertakers’ (“SU”), other undertakers’ and utility providers’ land included in the ExA’s Recommended Order; and
- the authorisation of powers for the extinguishment of rights and removal of apparatus of SUs, other undertakers and utility providers included in the ExA’s recommended Order.

Crown Consents

- 6.2. On 24 July 2025, the Crown Estate confirmed that no consent is required under Section 135(1) for Plots 19-001, 19-002, 19-003 and 20-003. The Crown Estate confirmed its consent to Articles 3, 4, 5, 6, 7, 39, and 41 of the Order, to the extent that they are included in the Order, applying in relation to Crown land forming part of the Crown Estate within the Order limits for the purpose of section 135(2) of the Act. The Secretary of State considers this matter now resolved.

Defence Infrastructure Organisation (“DIO”)

- 6.3. In relation to the Secretary of State for Defence’s property interests at land at Orford Ness (Plots 19-001, 19-002, 19-003 and 20-003), on 8 August 2025, the Applicant provided confirmation that the DIO had provided its consent as required by Section 135(2) of the Act. The Secretary of State considers this matter now resolved.

National Trust (“NT”)

- 6.4. During the Examination the Applicant sought to remove all of the land inalienably held by the NT from the CA powers [ER 9.9.18]. The Applicant advised that for Plot 19-001 it agreed with the NT that it had been conveyed to the NT and accordingly, the Applicant advised it was no longer seeking CA powers for Plot 19-001 [ER 9.9.18]. On 5 June 2025 NT confirmed the withdrawal of its objection regarding Plot 19-001, following the NT and the Applicant signing Heads of Terms for an Access Licence over this land. On 25 July 2025 the Applicant provided revised versions of sheet 19 in the Onshore Land Plans and the BoR removing Plot 19-001 from the CA powers being sought.

Plot 17-024

- 6.5. The ExA recommends that any made Order should exclude CA powers in respect of the acquisition of the freehold for the part of Plot 17-024 to the east of the Norman’s Farm [ER 9.7.53]. The ExA recommended that the Secretary of State should ask the Applicant to provide amended versions of sheet 18 in the Onshore Land Plans and the BoR to reflect the scenario of Plot 17-024’s partial removal from the power sought [ER 9.10.1]. On 11 July 2025, the Secretary of State sought updates from the Applicant in accordance with the ExA’s recommendation.

- 6.6. On 25 July 2025, the Applicant responded stating it had amended plot 17-024 on 2.3 Land Plans (Onshore) Revision G, to remove the freehold acquisition rights from the area immediately adjacent to Norman's Farm on the east and west. The Applicant stated that the area is identified by the creation of plot 17-024A and together with an amendment to part of plot 17-024, is shown on the Land Plans as: "Land not subject to CA or TP". The Applicant confirmed that the BoR has been updated accordingly and that no change is needed to the Order to support this amendment. However, the Applicant maintains that screen planting to the north of Norman's Farm and the wider screen planting to the east of Norman's Farm is required in order to mitigate the impacts of the substation to an acceptable level in landscape and visual terms. The Applicant notes that the removal of the full extent of the planting around the exterior of the eastern field in plot 17-024 requested by the Secretary of State would mean the Applicant would be unable to deliver the necessary landscape mitigation (screen planted tree belts) committed to through the Landscape and Visual Assessment and secured in the oLEMP [REP8A-017] which follows the existing field boundaries and remove the opportunity for this planting to be done at the start of the construction programme.
- 6.7. On 7 August 2025 ECC and TDC also responded stating that they support the Applicant's proposed approach to retain the planting buffer around the perimeter of Plot 17-024.
- 6.8. On 16 September 2025 Fairley Farms, the owner of Norman's Farm stated that it appreciates the changes, however is disappointed that it does not go further. It's view is that the new land plans leave an entirely unproductive area of land which cannot be farmed, and that enclosing the remainder of the field with a tree planting belt will have a significant impact on farming operations due to shading.
- 6.9. The Secretary of State considers that the Applicant's reasoning is compelling and has therefore accepted the Applicant's position in relation to this matter. The Secretary of State considers that the removal of the area surrounding Norman's Farm (plot 17-024A) as proposed by the Applicant is sufficient to resolve the issue regarding Plot 17-024. The Applicant will still be able to achieve most of the proposed landscaping, and only a small area of landscaping will be lost. The CA Powers is needed for potential landscaping and for the proposed NFOWF substation. Although the NFOWF substation has an alternative landscaping scenario with less land used at Plot 17-024, the Secretary of State considers the final landscaping design has not been agreed and therefore there is need for flexibility. The Secretary of State considers the amount of land the Applicant is requesting in Plot 17-024 is not excessive and has a purpose. The ExA suggested removing a larger area of land in pink surrounding the grey area, and this would have meant a larger area of landscaping would not be achieved and reduce the potential for onsite BNG. The area in grey in the land plan is agricultural field, and is land excluded from the CA and TP, and would therefore remain an agricultural field. The Secretary of State considers the proposed interference in the rights for those with an interest in the Applicants amended Plot 17-024 would be legitimate and proportionate, and justified, and the public benefits derived from acquiring this land would outweigh the private loss. On 7 November 2025, the Applicant stated that heads of terms had been agreed with T Fairley covering the permanent acquisition of land within plot 17-024.

Plots 17-015, 17-016, 17-017, 17-018

- 6.10. The ExA recommended that the Secretary of State ask the Applicant to provide amended versions of sheet 18 in the Onshore Land Plans and the BoR to reflect the removal of TP and CA powers from Plots 17-015, 17-016, 17-017 and 17-018 [ER 9.10.1].

- 6.11. The Applicant responded to the Secretary of State's request, stating that permanent rights of access only are sought over plots 17-015, 17-016, 17-017 and 17-018 for the construction and operational phases to allow access to the area proposed as landscaping for the onshore substation (part of 17-024), for the creation and maintenance of the landscaping measures. The Applicant stated that the owners (or reputed owners) of each of plots 17-015, 17-016, 17-017 and 17-018 have been identified in the BoR as both T. Fairley & Sons Limited and ECC (as highway authority). The Applicant confirmed that the plots are allocated as 'access rights' only and no other rights are sought in these plots meaning that only the minimal level of interference necessary to deliver and maintain the project has been included. The Applicant noted that, as can be seen from aerial imagery and on-the-ground inspection, the actual distinction between what is highway verge and what is currently farmed land is imprecise. The Applicant has therefore considered a need to preserve access over these plots from the publicly maintainable highway to the area that will, ultimately, accommodate a portion of the landscaping required. On 7 November 2025, the Applicant stated that heads of terms had been agreed with T Fairley covering the acquisition of permanent rights within plot 17-018.
- 6.12. The Secretary of State considers that the Applicant's reasoning is compelling and has therefore accepted the Applicant's position in relation to this matter. The Secretary of State considers permanent rights of access are required over plots 17-015, 17-016, 17-017 and 17-018 for potential landscaping.

Plots 16-022 and 17-005

- 6.13. The Applicant proposed a loop road using Plot 16-002 and 17-005 to avoid a lowland meadow habitat [ER 9.7.24]. The ExA considers that the Applicant had not provided sufficient justification for proposing a route that diverges from the OnECC route, given that the Applicant for the NFOWF is not seeking this route [5.3.52]. The ExA notes the Applicant accepts the Proposed Development could be constructed without relying on the loop road, and the ExA consider granting TP powers in respect of Plots 16-022 and 17-005 cannot be justified and would be unnecessary [ER 5.3.52]. The ExA recommends the exclusion of the entirety of Plots 16-022 and 17-005 from the TP powers sought, in line with the changes included in the ExA recommended Order. The ExA also recommended that the Secretary of State should ask the Applicant to submit revised versions of Sheet 17 in the Onshore Land Plans and the BoR to reflect the removal of Plots 16-022 and 17-005 from the TP powers sought [ER 9.10.1].
- 6.14. The Secretary of State asked the Applicant to provide amended plans. The Applicant removed the TP rights as requested in plots 16-022 and 17-005 shown on Revision G of the Land Plans and updated in the BoR Revision H. However the Applicant reiterated its rationale for including Plots 16-002 and 17-005 as a potential loop road as alternative to the OnECC route, to avoid a S41 lowland meadow habitat (UKHab primary code g3a), which is of local importance. The Applicant noted that the removal of the TP rights from these two land parcels means that the Applicant is unable to explore options to minimise the impacts to this S41 habitat unless land rights can be agreed voluntarily with the affected parties. The Applicant stated it will look to re-establish lowland meadow on the area from which it had been lost; via salvage of turves prior to construction, sustaining them during the course of construction then reinstating after construction. The Applicant noted that the process of salvage, reinstatement, monitoring and management would need to be included in the approved LEMP for this stage. The Applicant stated that should the Secretary of State

determine that the TP powers over these plots should not be granted, the plot numbers will require to be deleted from schedule 6 of the Order.

- 6.15. The Secretary of State agrees with the ExA that Plots 16-002 and 17-005 are not required as the Proposed Development could be constructed without relying on the loop road. The Secretary of State notes the meadow land that the Applicant is seeking to avoid, by providing the loop road, is not subject to any statutory designations and the habitat could potentially be removed as part of farming activities.

Plots 17-031

- 6.16. The ExA recommends the exclusion of the entirety of Plot 17-031 from the acquisition of the rights sought, unless it can be demonstrated to the Secretary of State's satisfaction that there is either no alternative mechanism to the CA of rights for securing a connection between the proposed OnSS and the EACN site or it would currently be impossible to reduce the powers sought within Plot 17-031 to a more proportionate extent [ER 9.10.1].
- 6.17. The Secretary of State requested updates from the Applicant on this matter. The Applicant responded stating NGET does not yet own any of the EACN substation land and cannot grant any rights to such land to the Applicant and it is not yet clear how much of plot 17-031 NGET Grid will acquire. The Applicant notes that Hornsea Project Three Offshore Wind Farm when connecting to Norwich Main Substation, had to take a precautionary approach and include a large area of land around the substation in order to deal with uncertainty. The Applicant also notes Sheringham Shoal and Dudgeon extension projects had to connect to Norwich Main Substation and the uncertainty as to the connection, meant a large area of land was included. The Applicant notes it is not part of the role of NGET to secure land rights for developers to get cables to their substations.
- 6.18. The Secretary of State considers that the Applicant's reasoning is compelling and has therefore accepted the Applicant's position in relation to this matter.

18-001 and 18-002

- 6.19. The ExA recommends the exclusion of TP and CA powers from the entirety of Plots 18-001 and 18-002 in any made Order, in line with the changes included in the ExA recommended Order, and the Applicant's submission of revised versions of Sheet 18 in the Onshore Land Plans and the BoR to reflect the removal of Plots 18-001 and 18-002 from the land rights powers sought [ER 9.10.1].
- 6.20. The Secretary of State requested updates from the Applicant on this matter. The Applicant responded requesting to keep powers in relation to 18-001 and 18-002 given the Applicant, North Falls and NGET's Grid tripartite position statement [REP8-029] which sets out NGET's agreement that the precise location and layout of the substation is not yet known and the whole area therefore requires to be included. The Applicant needs to be able to access the cables and rights for the cables and for access are therefore required over the whole area, at this time, but would only be taken over the final route and access route. Plots 18-001 and 18-002 form part of the site identified by NGET for their substation development. The Applicant notes removing Plots 18-001 and 18-002 presupposes that the Applicant is not given a connection on the northern side of any substation to be built and that the cable bends do not need to extend onto that area; the Applicant submits that this assumption is not justified at this stage and creates an entirely unnecessary delivery risk to the project. It does

not and cannot have a point of connection at this time as the detailed design of the substation is not yet known and the Applicant has therefore not been allocated a bay within the proposed substation. That detail will not be provided by NGET, who will build the infrastructure, for some time. The Applicant noted at Deadline 8 [REP8-048] that NGET have said the layout and design arrangement for an air-insulated switchgear substation is dictated by safety and circuit design practicalities and as a result, there is no opportunity for the layout arrangement to be modified for design reasons.

- 6.21. The Secretary of State considers that the Applicant's reasoning is compelling and has therefore accepted the Applicant's position in relation to this matter. The Secretary of State considers the precise location and layout of the EACN Substation is not yet known yet and the Applicant does not and cannot have a point of connection at this time, and therefore flexibility is required. The Secretary of State notes the Applicant needs to be able to access the cables, and rights for the cables and for access, are therefore required over the whole area, but would only be taken over the final route and access route.

Network Rail ("NR")

- 6.22. The Secretary of State asked the Applicant and NR to provide an update on whether any agreement has been reached regarding respective PPs. On 25 July 2025 the Applicant confirmed that heads of terms for an option to enter into a Deed of Easement were received from NR, allowing progress to be made on PPs. On 8 August 2025 the Applicant confirmed that discussions were ongoing and that the position has not changed since 25 July 2025. The ExA recommend that the PPs in favour of NR should be included, as reflected in the recommended Order, and the ExA consider that would accord with the provisions of s127 of the 2008 Act [ER 10.4.53]. The Secretary of State agrees with the ExA and has included the recommended PPs in favour of NR in the Order.

Other Protective Provisions

- 6.23. On 18 June 2025 the Applicant confirmed that agreement on a form of PPs has now been reached with Affinity Water. The Secretary of State has added the agreed PPs to the Order.
- 6.24. The Secretary of State asked the Applicant to provide an update if any other outstanding PPs have been agreed. At the close of Examination PPs had not been agreed with London Gateway Port Limited ("LGPL"), Port of London Authority ("PLA") offshore, ECC as the highway authority, and Anglian Water Services Limited ("AWSL") [ER 10.4.45]. On 25 July 2025, the Applicant confirmed there were no changes to PPs with other SUs from the position set out in the Applicant's letter issued 18 June 2025.
- 6.25. In relation to National Highways PPs, on 18 June 2025 the Applicant confirmed the version of the PPs included in the Applicant's preferred version as submitted at the final Examination deadline (Deadline 8A) were not correctly updated to the final version, agreed with National Highways. The correct version as agreed with National Highways was provided and the Secretary of State has included these in the Order.
- 6.26. On 18 June 2025, the Applicant confirmed that, in relation to PPs in general, a number of other minor errors were picked up in the PPs since the close of the Examination where the submitted DCO did not align with the agreed versions between the parties. The Applicant set the changes out in Annex A of its letter. The Secretary of State has included these in the Order.

- 6.27. The ExA concludes that PPs in favour of: LGPL [ER 10.4.63], PLA offshore [ER 10.4.73], and ECC as the highway authority [ER 10.4.75] be included in the Order. The ExA concludes that PPs drafted by the Applicant for the benefit of AWSL be included in the Order [ER 10.4.78]. AWSL made no further submissions after the RR but on 23 October 2025 it reiterated that it disagreed with the total liability costs cap proposed by the Applicant. Having considered the representations the Secretary of State agrees with the ExA in that the current PPs, including the cap on liability are reasonable and there would not be serious detriment to AWSL. The Secretary of State agrees with the ExA's conclusions in relation to these PPs.

Updates to heads of Terms

- 6.28. On 7 November 2025 the Applicant stated that heads of terms had also been agreed with T Fairley covering the acquisition of permanent rights within plots 17-006 and 17-004. The Applicant also noted the agreed heads of terms with the second landowner at the substation site covering plot 17-025.

Time limits

- 6.29. The Secretary of State notes that article 22 of the draft DCO allows for a period of seven years for the exercise of power of CA from the commencement of development. The Applicant's Explanatory Memorandum states that this is because of the scale of the project, the need to deliver habitats compensation in advance of offshore works, the objective to co-ordinate with NFOWF and the need to secure a contract for difference award prior to the commencement of construction. Given the project scale including the need to co-ordinate with NFOWF, the Secretary of State considers that seven years is an appropriate timeframe in this case.

The Secretary of State's Overall Conclusions

- 6.30. The Secretary of State concludes that the powers sought are necessary to construct, operate, and maintain the Proposed Development, there is a compelling case in the public interest for CA and TP and that the powers sought satisfy the conditions set out in the relevant CA Sections of PA2008 and the Guidance related to procedures for the CA of land" (September 2013).
- 6.31. The Secretary of State concludes that the CA and TP powers, PPs, powers authorising the CA of SUs land and rights over land, and the powers authorising the extinguishment of rights and removal of apparatus of SUs, be granted.
- 6.32. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

7. Secretary of State's Consideration of the Planning Balance and Conclusions

- 7.1. The Secretary of State acknowledges the ExA's recommendation that subject to the matters set out Section 11 of its report, that the case for the development has been made and the Secretary of State should make the Order and development consent be granted [ER 11.4.1].
- 7.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Alternatives – The Applicant provided sufficient detail of reasonable alternatives and reasons for its choices;
- Navigation and shipping (neutral weight);
- Commercial fishing (little negative weight);
- Seascape, landscape and visual effects (little negative weight);
- Landscape and visual effects (little negative weight);
- Traffic and transport (little negative weight); and
- Socio-economics (neutral weight).

- 7.3. The paragraphs below summarise the planning balance weightings ascribed to those matters where the Secretary of State had further commentary and analysis to add.
- 7.4. The ExA ascribed neutral weight to cumulative and interrelated effects [ER 6.5.25]. The Secretary of State notes that Cumulative and interrelated effects are accounted for and weighted in the consideration of each section already, and has not ascribed any further weighting to avoid double counting of effects.
- 7.5. The Secretary of State has ascribed substantial positive weight to the need case. The difference in the terminology used by the Secretary of State (compared to the ExA weighting of very great positive weight) is to ensure consistency to the policy set out in NPS EN-1, however the conclusions are different in terminology only. This weighting includes an allowance for the contribution the Proposed Development would make to assisting with addressing the effects of climate change.
- 7.6. Regarding the matter of benthic and intertidal ecology, the Secretary of State has ascribed little negative weight to matters in the overall planning balance, noting the Applicant's amendments to the OIPMP.
- 7.7. Noting the Applicant's amendments to the OIPMP, the Secretary of State has ascribed little negative weight to matters related to offshore ornithology in the overall planning balance.
- 7.8. Regarding marine mammals, fish, and shellfish ecology, the Secretary of State ascribes little negative weight in the planning balance.
- 7.9. The Secretary of State has ascribed the section 'Other offshore infrastructure and activities' (including wake effects) very little negative weight.
- 7.10. The Secretary of State has ascribed the matter of farming moderate negative weight in the planning balance, noting the updates to the CoCP and the Applicant's responses to the information requests.
- 7.11. Noting the Applicant's responses to the information requests, and the amendments to the Order and CoCP, the Secretary of State has ascribed little negative weight to matters related to air quality and airborne noise and vibration.
- 7.12. The Secretary of State has ascribed little negative weight to matters related to onshore ecology and biodiversity in the overall planning balance.
- 7.13. The Secretary of State has ascribed neutral weight to matters relating to flood risk and water quality, noting the responses received from the Applicant, EC and ECC.

- 7.14. The Secretary of State has ascribed impacts on the historic environment moderate negative weight in the overall planning balance. The Secretary of State agrees with the ExA that the public benefits outweigh the identified less than substantial harm to heritage assets, taken both individually and cumulatively.
- 7.15. The Secretary of State has ascribed the matter of good design moderate negative weight in the planning balance following the responses received. The Secretary of State considers that the independent review of the JDG and the addition of detailed landscaping plans secured as part of Requirement 5 will contribute to facilitating and securing a cohesive design.
- 7.16. The Secretary of State acknowledges that all NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed by the ExA as having not breached NPS EN-1 and NPS EN-3, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.
- 7.17. For the reasons given in this letter, the Secretary of State concludes that the benefits of the Proposed Development outweigh its adverse impacts. The Secretary of State concludes that development consent should be granted for the Five Estuaries Offshore Wind Farm and associated development. The Secretary of State does not believe that the national need for the Proposed Development as set out in the relevant NPSs is outweighed by the Development's potential adverse impacts, as mitigated by the proposed terms of the Order.
- 7.18. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by Babergh District Council, East Suffolk Council, Essex County Council/Tendring District Council and Suffolk County Council, the NPSs, NPPF, planning practice guidance, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.
- 7.19. The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent granting development consent, including the modifications set out in section 9 of this document.

8. Other Matters

Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following

“protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships⁴; pregnancy and maternity; religion and belief; race; sex and sexual orientation.

- 8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.
- 8.4. The Secretary of State is confident that, in taking the recommended decision, the Secretary of State has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

- 8.5. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 8.6. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform the Secretary of State in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

Countryside and Rights of Way Act 2000

- 8.7. The Secretary of State notes the general duty of public bodies to seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty, in accordance with section 85(A1) of the Countryside and Rights of Way Act 2000. In considering this matter the Secretary of State has had regard to the representations made by parties during and after the conclusion of the Examination. The ExA notes that a development of this scale, by its very nature, will struggle to conserve or enhance the special qualities of the Suffolk Coastal Heaths Area of Outstanding Natural Beauty, in terms of landscape and scenic qualities. However, the Secretary of State notes the Proposed Development’s distance from the shore, and the design measures the Applicant has applied to mitigate the effects whilst maintaining the operability of the Proposed Development. The Secretary of State notes that the refinements to the northern array boundary and the reduction in blade tip height has served to reduce the visual impacts and maintain a suitable

⁴ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

level of separation between the existing, consented and proposed offshore wind farms. The Secretary of State considers that the duty to conserve and enhance does not necessarily require all effects whatsoever, to be offset by enhancement measures. The Secretary of State agrees with the ExA and is of the view that the measures are reasonable and proportionate in this case. He considers that the proposals serve to conserve the special qualities and key characteristics of the protected landscape and the duty under section 85(A1) has been satisfied and no further mitigation or enhancement measures are required.

9. Modifications to the draft Order

9.1. Following consideration of the recommended Order provided by the ExA, the Secretary of State has made the following modifications to the recommended Order:

- Amendments to article 7 (Benefit of the Order) to the information that must be provided in the notices required under paragraphs (5) and (8) of that article and the documents that must accompany those notices and to provide a minimum period of notice to the Secretary of State of such a transfer.
- Amendment to article 8 (Application and modification of legislative provisions) to remove sub-paragraph (i) and the disapplication of sections 28E and 28H of the Wildlife and Countryside Act 1981. These ensure that NE are notified of work which will take place within a SSSI.
- Amendment to article 9 (Defence to proceedings in respect of statutory nuisance)
- Amendment to article 12 (Construction and maintenance of new or altered highway) to include a definition of 'relevant highway authority'.
- Amendments to article 14 (Temporary restriction of use of streets) to enable the undertaker to temporarily close, restrict, alter or divert the streets specified in Part 1 (Streets to be temporarily restricted) of Schedule 4 (Traffic regulation) to the extent specified on the street works and access plan and to require the undertaker to consult the street authority prior to closing, restricting, altering or diverting a street using that power.
- Amendment to article 16 (Traffic regulation) to remove sub-paragraphs (1)(c) and (d). These appeared to duplicate the provisions of article 14 and were potentially confusing.
- Amendment to article 18 (Discharge of water) to remove the presumption of deemed consent from the Environment Agency consents under sub-paragraph (5).
- Amendment to article 19 (Authority to survey and investigate the land) to require the undertaker to remove all apparatus placed on the land as soon as practicable following completion of any activities undertaken pursuant to that article and to restore the land to its original condition.
- Deletion of (previously) article 21 (Removal of human remains) which is not considered necessary or appropriate due to separate statutory requirements. This is consistent with the position taken in previous Orders granted by the Secretary of State.
- Amendments to article 21 (Compulsory acquisition of land) to provide that the compulsory acquisition of land is subject to articles 22 (Time limit for exercise of authority to acquire land compulsorily), 27 (Acquisition of subsoil only), 29 (Rights under or over streets), 40 (Crown rights) and 41 (Protective provisions).
- Amendment to article 25 (Private rights) to provide that private rights or restrictive covenants under that article cease to have effect from the date of acquisition of the land by the undertaker, rather than from the date of an interest in the land acquisition.

- Amendment to article 31 (Temporary use of land for maintaining the authorised development) to reduce the maintenance period to the usual period of five years from the date on which the authorised development is brought into commercial operation.
- Amendments to article 35 (Application of landlord and tenant law) to specify the agreements to which that article applies.
- Amendments to article 36 (Felling or lopping of trees and removal of hedgerows) to enable the undertaker to remove any hedgerows that are within the Order limits and specified in Part 2 (Removal of hedgerows) of Schedule 12 or any important hedgerows that are within the Order limits and specified in Part 3 (Removal of important hedgerows) of Schedule 12 that are required to be removed for the purposes of carrying out the authorised development.
- Amendment to article 37 (Trees subject to tree preservation orders) to include a definition of 'tree preservation order'.
- Amendment to article 38 (Abatement of works abandoned or decayed) to include all offshore works. It was unclear why only Work No 1 was relevant here.
- Amendments to article 42 (Application of the 1990 Act) to remove the provisions that relate to any planning permission initiated prior to the commencement of the authorised development. These are not considered necessary and create potential ambiguity.
- Amendments to article 46 (Requirements) to remove the provisions that relate to section 78 of the Town and Country Planning Act 1990, which are not considered necessary and create ambiguity. Part 2 (Approval of matters specified in requirements) of Schedule 2 (Requirements) provides an appeals mechanism in relation to decisions on the discharge of requirements. Seeking to also apply the appeals process set out in section 78 of the Town and Country Planning Act 1990 to those decisions does not add anything and will create legal uncertainty in relation to the process to be followed.
- Amendments to requirements 5(2), 6(2), 7(2), 11(1) and 16(1) to remove the reference to substantially. The final plans should be in accordance with outline plans certified.
- Amendment to requirement 9 (Onshore archaeology) in Part 1 of Schedule 2 (Requirements) to include a definition of 'intrusive'.
- Amendment to requirement 10 (Landscape and Ecological Management Plan) in Part 1 of Schedule 2 (Requirements) to require the discharging authority to consult with various bodies when approving the landscape and ecological management plan.
- Amendments to requirement 12 (Protected species onshore) in Part 1 of Schedule 2 (Requirements) to include reference to the Protection of Badgers Act 1992.
- Amendments to requirement 15 (Control of noise during operation stage) in Part 1 of Schedule 2 (Requirements) to include additional requirements in regard to noise control.
- Amendment to requirement 20 (Biodiversity net gain) in Part 1 of Schedule 2 (Requirements) to require the undertaker to submit a biodiversity net gain strategy for approval by the relevant planning authority which sets out how a minimum of 10% biodiversity net gain for all of the onshore works of the authorised development will be secured.
- Amendment to requirement 23 (Migratory bat monitoring) in Part 1 of Schedule 2 (Requirements) to make provision for the submission and approval of a migratory bat monitoring plan.
- Addition of a new requirement 26 (Landfall drilling risk assessment) in Part 1 of Schedule 2 (Requirements) to make provision for the submission and approval of a landfall drilling environmental risk assessment.

- Addition of a new requirement 27 (Farmland bird compensation) to secure compensation for the loss and / or displacement of skylark and corn bunting territories as a result of the authorised development.
- Amendment to paragraph 6(3)(c) of Part 2 of Schedule 2 to allow 15 working days for the discharging authority to provide representations.
- Amendments to the Deemed Marine Licences (Schedule 10 (Generation assets) and 11 (Transmission assets)) to amend the definitions to include plans that are now certified under Article 43 of the Order, amend paragraph 21 of Part 2 of Schedule 10 and similarly of Schedule 11 on soft-start procedures to require primary and secondary measures for noise reduction under the marine mammal mitigation protocol, and amend multiple paragraphs in regards to monitoring to account for unanticipated impacts that go beyond the environmental statement, the Habitats Regulations Assessment and the Marine Conservation Zone Assessment, which requires an adaptive management plan to be submitted by the undertaker.
- Amendments to Parts 1-4 of Schedule 13 (Compensation) to amend the process the undertaker must follow to provide compensation for Lesser Black Backed Gull (Part 1), amend the process the undertaker must follow to provide compensation for kittiwake or make a payment to the Marine Recovery Fund (Part 2), amend the process the undertaker must follow to provide compensation for guillemot and razorbill or make a payment to the Marine Recovery Fund (Part 3), and amend the process the undertaker must follow to make a payment to the Marine Recovery Fund to compensate for benthic impacts (Part 4).

9.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency and changes to achieve consistency with other DCOs.

10. Challenge to decision

10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A to this letter.

11. Publicity for decision

11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

11.2. Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Planning

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010115>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effects on Integrity
ALO	Agricultural Liaison Officer
AWSL	Anglian Water Services Limited
BNG	Biodiversity Net Gain
BNG Metric	BNG Statutory Biodiversity Metric calculations
BOR	Book of Reference
BS	British Standard
CA	Compulsory Acquisition
CIEEM	Chartered Institute of Ecology and Environmental Management
CoCP	Code of Construction Practice
DCO	Development Consent Order
DIO	Defence Infrastructure Organisation
DML	Deemed Marine Licence
EACN	East Anglia Connection Node Substation
EA2	East Anglia Two Offshore Wind Farm
EA2L	East Anglia Two Limited
ECC	Essex County Council
EIA	Environmental Impact Assessment
EQRP	Essex Quality Review Panel
ES	Environmental Statement
ExA	The Examining Authority
FRA	Flood Risk Assessment
GHG	Greenhouse Gas
HRA	Habitats Regulations Assessment
IP	Interested Parties
IROPI	Imperative Reasons of Overriding Public Interest
JDG	Joint Design Guide
LGPL	London Gateway Port Limited
LIR	Local Impact Report
LNRS	Local Nature Recovery Strategy
LSE	Likely Significant Effect
MDE	Marine Data Exchange
MMO	Marine Management Organisation
MNR	Marine Noise Registry
NE	Natural England

NERC Act	Natural Environment and Rural Communities Act 2006
NFOWF	North Falls Offshore Wind Farm
NGET	National Grid Electricity Transmission PLC
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NR	Network Rail
NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
NT	National Trust
oBNGIDSR	Onshore Biodiversity Net Gain Indicative Design Stage Report
OIPMP	Offshore In-Principle Monitoring Plan
oLEMP	Outline Landscape and Ecological Management Plan
oMMMP	Outline Marine Mammal Mitigation Protocol – Piling
oMMMP-UXO	oMMMP Unexploded Ordnance
OnECC	The Onshore Export Cable Corridor
OnSS	Onshore Substation
OTE	Outer Thames Estuary
PLA	Port of London Authority
PP	Protective Provisions
PSED	Public Sector Equality Duty
RR	Relevant Representation
SAC	Special Area of Conservation
SNCB	Statutory Nature Conservation Body
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
TDC	Tendring District Council
The Applicant	Five Estuaries Offshore Wind Farm Limited
The EIA Regulations	The Infrastructure Planning Environmental Impact Assessment Regulations 2017
The Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
The Noise Protocol	The Outline Noise Complaints Protocol
The Proposed Development	The Five Estuaries Offshore Wind Farm
The Secretary of State	The Secretary of State for Energy Security and Net Zero
The 2008 Act	The Planning Act 2008
TP	Temporary Possession

WEA	Wake Effects Assessment
WLA	Wake Loss Assessment
WTG	Wind Turbine Generators