The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008 (as amended)

Dogger Bank Teesside A and B Offshore Wind Farms

Examining Authority's Report of Findings and Conclusions

and

Recommendation to the
Secretary of State for Energy and Climate Change

Examining Authority

Rynd Smith

Jeremy Aston

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5 May 2015

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Version 1.13

Report to the Secretary of State
Dogger Bank Teesside A and B Offshore Wind Farm

The Examining Authority's findings, conclusions and recommendation in respect of an application by Forewind for an Order granting development consent for the Dogger Bank Teesside A and B Offshore Wind Farms

File Ref EN0100051

The application, dated 28 March 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 28 March 2014. The applicant is Forewind.

The application was accepted for examination on 23 April 2014. The examination of the application began on 5 August 2014 and was completed on 5 February 2015.

The development proposed comprises the second of Forewind's three stage offshore wind energy development proposals for the Dogger Bank Zone. The first stage is Dogger Bank Creyke Beck (in respect of which there is a made Order) and the third of which is proposed to be Dogger Bank Teesside C and D (in respect of which an application has yet to be made to the Planning Inspectorate).

Dogger Bank Teesside A and B is located within The Dogger Bank Zone, which comprises an area of 8660 square kilometres (km^2) located in the North Sea between 125 kilometres (km) and 290km off the UK North East coast. The onshore elements of the development are located in the Borough of Redcar and Cleveland.

Dogger Bank Teesside A and B consists of up to two wind farms, each with an installed capacity of up to 1.2GW. It follows that Dogger Bank Teesside A and B could have a total installed capacity of up to 2.4GW.

The wind farms are proposed to connect to the national grid at an existing national grid substation at Lackenby, near Eston. Two largely parallel offshore high voltage direct current cable alignments are proposed, which reach shore near Marske-by-the-Sea. From that location, two parallel high voltage direct current onshore cable alignments are proposed to pass over agricultural and industrial land to the Wilton Complex, where converter stations would be located. Two parallel and high voltage alternating current cable alignments would then make the connections to the transmission system at Lackenby.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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The Planning Inspectorate

ERRATA SHEET – Dogger Bank Teesside A&B Offshore Wind Farm – Ref. EN010051

Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 5 May 2015

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

Page No.	Paragraph	Error	Correction
99	5.1.3	"This status will remain until such time until the site"	'This status will remain until the site'.
119	5.7.28	"MMO advised the panel that no further comment could be made at during",	The 'at' should be removed.
119	5.7.29	"scientific doubt no AEoI on integrity",	no need for the 'on integrity'
120	5.7.32	Final sentence "to take whatr",	the what needs the 'r' removing
122	5.7.39	"It would be most inappropriate the Panel"	It would be most inappropriate 'for' the Panel
122	5.7.39	Second sentence, Dogger Bank C &.	The D is missing
132	5.7.85	Final sentence, "Farne islands SPA, in in"	one 'in' needs removing
137	5.7.104	Final sentence, "Fowlsheugh islands SPA, in in	one 'in' needs removing
139	5.8.12	"It the panel's view that",	needs an 'is' at the end of the sentence
57	4.3.17	(line 5) "…freehold land.lignment through…"	This is a quote from [REP120] from which a line has been omitted and should read as follows: '[i]t was not Forewind's intention to affect Grainco. It was always envisaged … that

			the route … would remain on Sembcorp's freehold land. Sembcorp always expected the route of the cables to avoid Grainco demised area [sic] and, subject to agreement upon the remainder of the route alignment through Wilton International, it … is willing to enter into legal agreements for … a route which runs to the south of the Grainco site.'
77	4.7.28	"However, NE these concerns were resolved"	'However, these NE concerns were resolved…'
86	4.10.10	"leisure and recreation"	should be "extractive industries"
92	4.12.1	No consideration of the Historic Environment	"Consideration was given to the historic environment. No matters of importance or relevance emerged that had not been addressed appropriately in the evidence base, the ES or required to be addressed differently than as proposed in the draft DCO."
135	5.7.96	"NE"	Should be "SNH"
75	4.7.17	"73.8m"	Should be "73.8km"
96	4.13.18	"powers if acquisition"	Should be "powers of acquisition"
100	5.1.8	"not Likely Significant Effect"	"the onshore works would not have a Likely Significant Effect (LSE)")
120	5.7.32	3rd line from bottom – "whatr"	the what needs the 'r' removing
121	5.7.39	First sentence	Should read "'However, turning to the effects of this position for this decision,'
122	5.7.39	5th line	Insert "D" in "C &…."
141	6.1.7	"compulsory acquisition affect persons"	Should be "affected" rather than "affect"
177	6.4.165	3rd bullet point – reference to "section 6.4 below"	Should be "section 6.4 above"
187	6.10.14	again "section 6.4 below"	Should be "section 6.4 above"
189	6.11.10	5th bullet point – "he" applicant	Should be "the" applicant
189	6.11.10	final sentence "in	Should be "in earlier sections of

		later sections of this chapter below" –	this chapter above"
189/190	6.11.11	"Section 6.4" below x 2	Delete: 'a matter that is returned to in section 6.4 below'
203	7.2.32	4th bullet – missing apostrophe after "Parties;"	Should be "Parties'"
203	7.2.32	4th bullet – missing apostrophe in "undertaker's" x2	There is a missing apostrophe but the reference is plural, not singular so it should be "undertakers' "
203	7.2.32	8th bullet "is is"	Should be "it is"
205	7.2.40	omission of apostrophe from "applicants"	Should be "applicant's"
207	7.2.46	Second instance "to refer"	Remove "to refer"
29 of Appendix A	Appendix A Article 42(1) (a)-(n) of the recommended draft DCO (Page 29)	Needs document references added	Insert " document reference x dated xx xxxxxxxx 201x" etc

1 INTRODUCTION

1.0 INTRODUCTION

1.0.1 This is the Examining Authority's report to the Secretary of State for Energy and Climate Change (the SoS), following the examination of an application for a Development Consent Order (DCO) for the Dogger Bank Teesside A and B Offshore Wind Farms (the application proposal) by Forewind (the applicant). It sets out the findings and conclusions of the Examining Authority (the Panel) and its recommendation to the SoS

1.0.2 A substantial body of documentation has been submitted to and referred to by the Panel throughout the examination. All submitted documents have been recorded in the Panel's examination document library found at Appendix B to this report. References to these documents are recorded in this report in square brackets. The document library in turn provides hyperlinked access to copies of the documents referred to in this report, all of which are publicly available[1].

1.1 APPOINTMENT

1.1.1 On 11 July 2014, Rynd Smith, Jeremy Aston and Guy Rigby were appointed as a Panel of Inspectors, under delegation from the SoS, to examine the application under s65 of the Planning Act 2008 as amended (PA2008) [PD-005].

1.2 THE APPLICATION

The proposed development

1.2.1 The proposed development for which development consent is required under s31 PA2008 is to construct and operate the proposed Dogger Bank Teesside A and B Offshore Wind Farms, which together comprise up to 200 wind turbine generators in each of two arrays: up to 400 wind turbine generators in total. Each proposed array has an installed capacity of up to 1.2GW: up to 2.4GW in total for both arrays [APP-001-162].

1.2.2 The application proposes the development of the offshore arrays within a sea area in the North Sea named the Dogger Bank Zone. The combined array areas would be located between 125km and 290km off the north-east coast of England [APP-002] [APP-013]. The proposed offshore development also includes eight collector platforms, up to four accommodation or helicopter platforms, up to ten meteorological stations and up to two converter platforms.

[1] The examination documents are publicly available via the following link to the national infrastructure pages of the Planning Portal website.

1.2.3 Offshore associated development is proposed to include two sets of HVDC (HVDC) export cables to connect the arrays to a coastal landing point between Redcar and Marske-by-the-Sea in the Borough of Redcar and Cleveland [APP-013].

1.2.4 The application proposes onshore associated development. From their landfall, the HVDC cables are proposed to follow an underground onshore transmission alignment approximately 7km west to a converter station compound, proposed to be situated within the Wilton Complex industrial site. The compound would contain the equipment necessary to convert the DC output to alternating current (AC). From the compound, a short underground onshore high voltage alternating current (HVAC) alignment would connect the electricity output to the existing National Grid Electricity Transmission (NGET) substation at Lackenby [APP-012].

The applicant and the application

1.2.5 The application was submitted by the applicant, Forewind, on 28 March 2014 [APP-001]. It was accepted for examination by the Planning Inspectorate on 23 April 2014 [PD-002].

1.2.6 The applicant advertised the accepted application and 41 relevant representations were received [REP-005 – 045]. The Panel has given due consideration to all of the issues raised by these in the examination.

1.2.7 A more detailed description of the application and the applicant can be found in Chapter 2 of this report below.

Compulsory acquisition

1.2.8 The application seeks compulsory acquisition (CA) powers for the acquisition of freehold land, permanent rights (such as rights of access) and temporary rights over land, associated with the proposed onshore works. Temporary rights are not a power of CA but have been dealt with alongside the examination of CA powers in Chapter 6.

1.2.9 A Book of Reference [APP-032] accompanied the application. This was supplemented with updated versions throughout the examination [REP-141, 142, 229, 230, 234, 236, 264, 368 and 369]. The application was also accompanied by an onshore land plan [APP-012] showing the land in the Book of Reference, again updated during the examination [REP-057, 144, 145 and 520-525] and a statement of reasons [APP-031] which again was revised during the examination [REP-367].

Environmental Impact Assessment

1.2.10 The application is for Environmental Impact Assessment (EIA) development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. It was accompanied by an Environmental Statement (ES) [APP-065 to APP-161], together with a

non-technical summary [APP-162]. The Panel is satisfied that the ES met the definition provided in Regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Habitats Regulations Assessment

1.2.11 The application identifies that it is one to which the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) (as amended) and the Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007 (as amended) apply. It was accompanied by a Habit Regulations Assessment Report (HRA Report) [APP-047 to APP-056]. The Panel is satisfied that the HRA Report was sufficient to enable the SoS to proceed to make an appropriate assessment (AA) pursuant to these regulations.

Minor changes to the application

1.2.12 Changes to the application were proposed by the applicant during the examination process, at Deadline III of 3 September 2014 [REP-150] and Deadline IV of23 September 2014 [REP-219-223] in the examination timetable, to implement design revisions and changes to land requirements in respect of the proposed HVDC and HVAC onshore transmission alignments. The proposed changes are detailed in Chapter 2 below and are described further in Chapter 6 in relation to their effects on compulsory acquisition.

1.2.13 On 1 October 2014, the Panel requested the applicant to publicly notify and advertise the proposed changes and undertook to consider any responses that emerged from these processes during the examination. It enabled Interested Parties (IPs) already participating in the examination to respond to the proposed changes. It issued written questions about the changes and their effects [PD-034-035].

1.2.14 Taking all of the outcomes of these processes into account, the Panel agreed that the proposed changes are of a minor nature and do not materially change the application from that which was originally submitted. This decision was communicated to all IPs on 25 November 2015 [PD-039]. The Panel has continued to examine and has reported on the application inclusive of these minor changes.

1.2.15 The Panel is satisfied that no additional environment information was necessary to address EIA or HRA requirements in respect of the proposed changes.

1.3 THE PRELIMINARY MEETING

1.3.1 The Preliminary Meeting for the examination was held at Redcar and Cleveland House, (Community Heart), Kirkleatham Street, Redcar TS10 1RT on Tuesday 5 August 2014.

1.3.2 The applicant and all other IPs, statutory parties [PD-005] and other invited persons [PD-006-021] were invited and provided with an opportunity to make representations about how the application should

be examined. All issues raised have been fully addressed within the examination process.

1.4 THE EXAMINATION

1.4.1 The examination process began following closure of the Preliminary Meeting. A record of examination procedures is included at Appendix D. It was delivered within the framework of procedural decisions and a timetable issued by the Panel on 8 August 2014 in its Rule 8 Letter [PD-022] except for the following amendments.

1.4.2 The timetable was amended on four occasions:

- on 1 October 2014 to provide a procedural response to the applicant's request that the Panel should examine minor changes to the application [PD-034] and to enable the issuing of an associated round of questions;
- on 1 December 2014 to enable the Panel to issue an additional round of questions in respect of the effects of the application on European Sites in Scotland [PD-040];
- on 8 December 2014 to provide for an additional compulsory acquisition hearing to address late requests to be heard by compulsory acquisition affected persons [PD-041]; and
- on 29 January 2015 to address a late written representation, disagreement between the applicant and SABIC UK Petrochemicals Ltd on the content of protective provisions for the Wilton Complex (the 'Wilton Provisions') and other outstanding matters relating to protective provisions, including the introduction of an additional deadline [PD-050].

1.4.3 The timetable as amended provided for responses to be submitted in a sequence of 11 deadlines (from Deadline I to Deadline XI), distributed throughout the examination period.

1.4.4 The examination consisted primarily of a consideration of relevant representations and written representations submitted to the Panel. An opportunity for local authorities to submit Local Impact Reports (LIRs) was provided. The Panel issued written questions and requests for further information. It requested the preparation of Statements of Common Ground (SoCGs) and the documentation of proposed agreements, undertakings and obligations. It conducted issue specific, compulsory acquisition and open floor hearings and carried out unaccompanied and accompanied site inspections. These processes are described further below.

Interested parties and other invited persons

1.4.5 In its Rule 6 letter [PD-005], the Panel invited the makers of all relevant representations and all statutory parties to become involved in the examination process. It issued specific additional invitations to neighbouring states [PD-006 - 015] and to UK government departments and agencies with apparent interests [PD-017 - 021] which had not already been identified as statutory parties. Following

the Panel's invitation to the Scottish Government [PD-019], Scottish Natural Heritage did participate in the examination and its representations have been taken fully into account. No other recipient of a specific additional invitation requested to participate in the examination.

1.4.6 The following statutory parties notified the Panel under s89 (2A) (b) that they wished to be IPs:

- Maritime and Coastguard Agency [REP-066]; and
- Royal Mail [REP-068].

Full consideration has been given to these persons' representations.

1.4.7 The Panel received requests to withdraw from the examination by ceasing to be an interested party from the following persons:

- Cleveland Potash [REP-194];
- UK Trade and Investment (UKTI) [REP-294]; and
- Network Rail Infrastructure Limited [REP-296].

Withdrawn representations are considered in this report to the extent necessary to ensure that concerns are resolved.

Written Representations

1.4.8 A full opportunity was provided for the applicant, IPs and invited persons to make written representations drawing the Panel's attention to the issues that they considered arose from the application proposal. Initial written representations were required to be submitted by 3 September 2014 (Deadline III), together with comments on relevant representations. Comments on initial written representations were sought by 23 September 2014 (Deadline IV). Responses to comments were sought by 23 October 2014 (Deadline V).

1.4.9 The Panel has considered all important and relevant matters arising from written representations.

Local Impact Reports

1.4.10 As required under s60 of the PA 2008, relevant local authorities were invited to submit a Local Impact Report (LIR). A LIR was received by Redcar and Cleveland Borough Council [REP-073]. This was the only LIR received during the examination. It has been fully considered by the Panel.

The Panel's written questions and requests for information

1.4.11 The Panel issued two rounds of written questions:

- Round 1 was issued on 11 August 2014 [PD-023], with responses to be received on 03 September 2014 and comments on responses to be received by 23 September 2014;

- Round 2 was issued on 28 October 2014 [PD-036], with responses to be received on 20 November 2014 and comments on responses to be received by 11 December 2014.

1.4.12 The Panel issued three requests for further information ('Rule 17' requests:

- on 1 December 2014 in respect of the effects of the application on European Sites in Scotland [PD-040];
- on 21 January 2015 in respect of a broad range of environmental effects and the securing of responses to them, disagreement between the applicant and SABIC UK Petrochemicals Ltd on the content of protective provisions for the Wilton complex (the 'Wilton Provisions') and in respect of Crown consent; and
- on 29 January 2015 in respect of a late written representation, disagreement between the applicant and SABIC UK Petrochemicals Ltd on the content of protective provisions for the Wilton Complex (the 'Wilton Provisions') and other outstanding matters relating to protective provisions, including the introduction of an additional deadline [PD-050].

1.4.13 The Panel has considered all important and relevant matters arising from its written questions and requests for further information and the answers provided to them.

Statements of Common Ground

1.4.14 The Panel requested the preparation of a range of Statements of Common Ground (SoCG) in the Rule 8 Letter [PD-022] by 28 August 2014 (Deadline II). The purpose of these was to ensure that negotiations between the applicant, IPs and invited persons were pursued and to ensure that the hearing process was confined to matters where agreement could not be achieved or was needed to subject submissions or evidence to oral test.

1.4.15 41 SoCGs were received by 28 August 2014. These were between the applicant and the following persons:

- North York Moors National Parks Authority [REP-074];
- German Fishermen's Association [REP-075];
- Tees Valley RIGS Group [REP-076];
- Danish Fishermen's Association [REP-077];
- Natural England (Onshore and Offshore) [REP-078 & 083];
- Swedish Fishermen's Federation [REP-084];
- Royal Society for the Protection of Birds (RSPB) [REP-085];
- Trinity House [REP-086];
- Redcar and Cleveland Borough Council [REP-087];
- Highways Agency [REP-088];
- Environment Agency (Onshore and Offshore) [REP-090];

- Whale and Dolphin Conservation [REP-091];
- Rederscentrale[2] [REP-093];
- Norwegian Fishermen's Association and Fiskebat [REP-094];
- Guisborough Town Council [REP-095];
- Gassco [REP-096];
- English Heritage (Offshore and Onshore) [REP-097 & 115];
- Public Health England [REP-098]
- Northern Powergrid [REP-099]
- EPIC Regeneration Consultants for Hartlepool Fishermen's Society [REP-100];
- Scottish Natural Heritage (correspondence) [REP-101];
- Royal Yachting Association [REP-102];
- Redcar and Teesbay Fishermen's Association [REP-103];
- Ministry of Defence (Defence Infrastructure Organisation Safeguarding) [REP-104];
- Civil Aviation Authority (correspondence) [REP-105];
- Shell [REP-106];
- Comte Regional des Peches Maritimes et des Elevages Marins (Nord Pas-de-Calais Picardie)[3] [REP-094];
- VisNed-NFFO[4] [REP-107];
- RWE Dea UK SNS Ltd[5] [REP-109];
- UK Chamber of Shipping [REP-111];
- Marine Management Organisation [REP-112];
- Northumbrian Water Ltd [REP-113];
- York Potash Ltd [REP-114];
- National Trust (Onshore and Offshore) [REP-116];
- Maritime and Coastguard Agency [REP-117];
- Tata Communications [REP-119];
- Sembcorp Utilities (UK) Ltd [REP-120];
- Hartlepool Borough Council [REP-121];
- North Eastern Inshore Fisheries and Conservation Authority [REP-122];
- The Wildlife Trusts [REP-123]; and
- National Grid plc [REP-124].

1.4.16 Throughout the examination, 7 further SoCGs were received between the applicant and the following persons:

- Skelton and Brotton Parish Council [REP-226];
- EPIC Regeneration Consultants for Hartlepool Fishermen's Society [REP-271];
- Middlesbrough Council [REP-272];
- Billingham Town Council [REP 273];
- Nunthorpe Parish Council [REP-274];
- Civil Aviation Authority [REP-326]; and

[2] A national representative body for fishing and shipping interests in Belgium.
[3] A regional representative body for fishing interests in Nord Pas-de-Calais Picardie, France.
[4] A combination of a national representative bodies for fishing from the Netherlands (VisNed) and the UK (National Federation of Fishermen's Organisations - NFFO).
[5] The operator of the Breagh A platform and associated pipelines with a distinct legal identify from RWE Innogy UK Limited - which is part of the applicant consortium.

- Saltburn, Marske and New Marske Parish Council [REP-352].

1.4.17 The Panel has taken the content of all submitted SoCGs into account, in the context provided by other written representations and oral submissions and evidence.

Agreements

1.4.18 The applicant sought commercial agreements to ensure the delivery and enforceability of agreed positions to address the following matters outstanding between it and IPs during the examination;

- Northumbrian Water Ltd
- NGET
- Northern Powergrid Yorkshire plc
- Sembcorp
- SABIC
- Yorkshire Potash Ltd

1.4.19 No s106 agreements or highways or other legal agreements or unilateral undertakings were received before the close of the examination.

Hearings

1.4.20 Hearings were held in five consolidated blocks between October 2014 and January 2015. All hearings were held at Redcar and Cleveland House (Community Heart), Kirkleatham Street, Redcar TS10 1RT.

1.4.21 Details of these hearings are set out in Appendix D but are summarised here as follows.

- **Issue-specific Hearing 1** [HR-004] took place between 14 and 16 October 2014. It examined issues relating to natural environment impacts and Habitats Regulations Assessment (HRA) on day one; issues relating to fisheries resource sustainability on day two; and issues regarding the structure and strategic intentions of the draft DCO and Deemed Marine Licences (DMLs) on day three.
- **Issue-specific Hearing 2** [HR-016] took place between 11 and 12 November 2014. It monitored progress on natural environment work undertaken to address matters raised in Issue-specific Hearing 1. It examined issues relating to onshore physical impacts and onshore socio-economic impacts on day one; and issues relating to community benefits, onshore traffic and transportation, offshore physical impacts and offshore socio-economic impacts on day two.
- **Issue-specific Hearing 3** [HR-033] took place between 2 and 3 December 2014. It examined issues relating to the natural environment where work had been undertaken to address matters raised in Issue-specific Hearing 1, offshore social and economic impacts and the detailed drafting of the DCO and DMLs.

- An opportunity was provided for IPs to attend an **Open-floor hearing** [HR-017] on the evening of 11 November 2014. There were no requests to be heard by IPs. However, the Panel exercised discretion and heard from a non-interested party local resident who made an oral representation in support of the application.
- **Compulsory Acquisition hearings** took place on 13 November 2014 and 4 December 2014. Owing to several late requests to be heard by CA affected persons, not all of these persons could be accommodated at the latter hearing, which was reconvened and completed on 13 January 2015.

1.4.22 The Panel has taken all submissions and evidence arising from hearings fully into account.

Site inspections

1.4.23 The Panel discussed its site inspection arrangements with the applicant and IPs at the Preliminary Meeting and provided opportunities for the nomination of site inspection locations. On the basis that the array locations were not visible from any land locations, the Panel did not propose to carry out any site inspections at sea and no such inspections were requested.

1.4.24 The Panel carried out one unaccompanied site inspection on land that enabled it to understand the application proposal in its natural and built environment, landscape and seascape contexts. The Panel also carried out five accompanied site inspections on land and visited all locations that it had been requested to inspect[6].

1.4.25 Factual notes of both unaccompanied and accompanied site inspections were prepared and published by the Panel as follows.

- **Unaccompanied site inspection 1** [HR-003] took place on 2 July 2014. This encompassed viewing the onshore cable alignment proposals and their settings from publicly accessible land between Marske, Redcar, Kirkleatham, Lazenby and Lackenby.
- **Accompanied site inspection 1** [HR-015] took place on 15 October 2014. This inspection was undertaken on private land within and adjacent to the secure perimeter of the Wilton Complex to view existing major production facilities within the complex, the passage of the proposed HVDC and HVAC cable alignments through the complex, the proposed converter compound site and a proposed change to the HVAC cable alignments in the environs of a facility operated by GrainCo to

[6] Cleveland Potash had requested that the Panel should make an accompanied inspection of the underground workings at its Boulby Mine [REP-064]. Further to the subsequent withdrawal of the relevant representation by Cleveland Potash, it was also agreed that the requested inspection at Boulby Mine would not take place [REP-194] and this inspection was cancelled.

address new development on that site. Other within-site infrastructure and development was inspected, as was the location of a facility operated by M&G Fuels.

- **Accompanied site inspection 2** [HR-018] took place on 11 November 2014. This inspection was undertaken on the publicly accessible foreshore between Redcar and Marske with the attendance of relevant experts to identify and view the location of the Red Howles RIG[7] site in the intertidal area, and the relationship between this feature and the proposed landing location for HVDC cables.
- **Accompanied site inspection 3** [HR-021] took place on 13 November 2014. The inspection was undertaken on private farmland to view the location of the proposed onshore HVAC cable alignment from the exit point to the southwest of the Wilton Complex to the NGET Lackenby substation (the proposed point of grid connection) to the west of the Greystone Road, and the settings of nearby historic buildings.
- **Accompanied site inspection 4** [HR-047] took place on 4 December 2014. The inspection was undertaken on private farmland to view the passage of the proposed HVDC cables between New Marske and Yearby, across holdings known as Pontac Farm, New Marske; Grewgrass Farm, Marske-by-the-Sea; Thrushwood Farm, Yearby; and Turners Arms Farm, Yearby, from where views towards the proposed entrance point to the Wilton Complex could be obtained.
- **Accompanied site inspection 5** [HR-053] took place on 14 January 2015. The inspection was undertaken to view the passage of the proposed HVDC cables across two specific sites on private land: residential garden land in the ownership of the Scaife family, (Plots 37A, 37B and 38 on the Onshore Land Plans sheet 04) [APP-012] near Turners Arms Farm, Yearby (the 'Scaife land'); and agricultural land in the ownership of the Jowsey family, (Plots 19A, 19B, 20A and 20B on the Onshore Land Plans sheet 02) [APP-012], between Redcar Road and Cat Flatt Lane, Marske-by-the-Sea (the 'Jowsey land').

1.4.26 The Panel has taken all observations arising from unaccompanied and accompanied site inspections fully into account.

Implications for European Sites

1.4.27 Further to the relevance of the HRA process (see paragraph 1.2.11 above), the Panel prepared a report summarising what appeared to be the main implications of the application proposal for European Sites with support from the Planning Inspectorate Environmental Services Team.

[7] RIG: regionally important geological site.

1.4.28 Known as the Report on Implications for European Sites (RIES) [PD-047], this document was issued on 19 December 2014 to inform the HRA process. Comments on the RIES were sought by 19 January 2015 and all those received have been considered. This information would enable the SoS to carry out an Appropriate Assessment (AA) if required as part of his statutory duties as the competent authority.

1.4.29 Chapter 5 of this report below contains a record of the Panel's examination of matters relevant to HRA.

Transboundary effects

1.4.30 The application proposal was screened for transboundary effects on other European Economic Area (EEA) states under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) on 30 July 2012 [PD-028]. On the basis of the information available from the applicant, the SoS was of the view that the proposed development was likely to have significant effects on the environment in another EEA State.

1.4.31 In reaching this view the SoS applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12: transboundary Impacts Consultation). A transboundary issues consultation was therefore considered necessary in relation to Belgium, Netherlands, France, Germany, Sweden, Norway and Denmark.

1.4.32 In accordance with Regulation 24(2)(b) of the EIA Regulations, a notice was placed in the London Gazette [PD-043] and letters were sent to the relevant bodies in the States listed above. Following notification, Sweden [PD-029], Netherlands [PD-030] and Germany [PD-031] stated that they wished to participate in the Regulation 24 process. No response was received from the other four EEA States.

1.4.33 Following acceptance of the application, the project was re-screened by the Planning Inspectorate on behalf of the SoS, on 23 April 2014 [PD-028]. This process identified likely significant effects on the environment in the same seven EEA States as the original screening and all seven were again consulted at that time. On that occasion Germany [PD-044] and Norway [PD-045] indicated an intention to participate in the process and there was no reply from the other five States.

1.4.34 Chapter 3 of this report below contains a record of the Panel's examination of matters relevant to transboundary issues.

Engagement on the draft Development Consent Order

1.4.35 The application was accompanied by a draft DCO [APP-028] and an Explanatory Memorandum [APP-029]. The Panel requested the applicant to accompany changes to the draft DCO with a consolidated version, a tracked changes version and a change log and records its appreciation of compliance with this request that has enabled

proposed changes and the reasons for these to be followed with relative ease.

1.4.36 Changes to the application draft DCO sought by the applicant were reflected in submitted iterations recorded as version 2 [REP-137-139] and version 3 [REP-214-216] to which the Panel has had regard, although it should be noted that these were rapidly superseded as the examination progressed.

1.4.37 The Panel examined the draft DCO at two Issue-specific hearings (see paragraph 1.4.22 above). The first of these hearings [HR-004] was held close to the start of the examination and provided an opportunity for the applicant to explain the structure of and rationale for the draft. Revisions to the draft DCO were submitted by the applicant following this hearing to address the matters raised (version 4) [REP-251-253]. The second hearing held towards the end of the examination [HR-033] addressed matters of detail arising from the draft in the light of all other written representations, oral submissions and evidence at that time. The applicant submitted a preferred draft DCO (version 5) to support discussion at this hearing [REP-374-376]. The Panel accepted this version as the basis from which to conduct this hearing and orally examined the DCO including the proposed changes incorporated in version 5. There were no objections to this approach from IPs.

1.4.38 Following the second DCO hearing, the applicant submitted a further draft DCO (version 6) [REP-426-428] to take account of matters raised orally at the hearing. It should be noted that this draft responded to the great majority of issues discussed at the hearing, to the extent that, with the exception of matters relevant to protective provisions and CA at the Wilton Complex which remained subject to an on-going dispute that is addressed in Chapters 4, 6 and 7 below, there were then relatively few outstanding matters to be resolved.

1.4.39 On 23 December 2014, the Panel issued its own commentary on the draft DCO [PD-048], in which it suggested changes to address matters that had arisen from examination to date, including both DCO hearings. Its purpose was to ensure that any potential changes to provisions adverse to the interests of the applicant or any interested party were known and responded to during the examination. Comments were sought by Deadline VIII on Monday 19 January 2015. The applicant's response included comments on the Panel's document [REP-467]. Taking account of responses to comments by other IPs, the applicant submitted a 'preferred draft' DCO at Deadline IX on Tuesday 27 January 2015 (version 7) [REP-499-501].

1.4.40 In an attempt to reach agreement on protective provisions for the Wilton Complex (the 'Wilton Provisions'), further draft DCO amendments were proposed at Deadline X on Monday 2 February 2015, after the applicant's preferred draft DCO had been issued. These were submitted by the applicant [REP-537], the MMO [REP-533], Sembcorp [REP-540] and SABIC [REP-541]. These submissions were not addressed in a further consolidated draft of the DCO by the

applicant. However, the applicant was able to comment on all IP submissions made at Deadline X and IPs were able to comment on applicant submissions for the same deadline at Deadline XI on Wednesday 4 February 2015 and have been considered.

1.4.41 All responses and comments on the draft DCO have been considered by the Panel throughout the examination. The nature of the process used to examine the draft DCO has been such that the remaining outstanding matters of concern to be addressed in Chapters 4 and 7 below are both limited in extent and relate to matters of on-going dispute between the applicant and the MMO, Sembcorp and SABIC.

Other consents

1.4.42 The application was accompanied by a document [APP-057] listing the consents and licences required under legislation other than PA2008 to enable the application proposal to proceed. These consents are recorded below.

Offshore consents

- Appropriate Assessment (The Conservation of Habitats and Species Regulations 2010);
- Habitats Regulations Assessment (The Conservation of Habitats and Species Regulations 2010);
- Notices of Safety Zones (Energy Act 2004);
- Decommissioning Scheme (Energy Act 2004);
- Notification of a construction project (F10) (Construction (Design and Management) Regulations 2007);
- Exemption under the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010;
- European Protected Species (Regulation 49 of the Offshore Marine Conservation (Natural Habitats & c) Regulations 2007);
- European Protected Species Licence (Regulation 53, of the Conservation of Habitats and Species Regulations 2010); and
- An energy generation licence (Section 6 of the Electricity Act 1989).

Onshore consents

- Water abstraction and impounding (Sections 24 or 25 of the Water Resources Act 1991);
- Water-Investigative Consents (Section 32 of the Water Resources Act 1991);
- Main river flood defence consenting (Section 109 of the Water Resources Act 1991);
- Byelaws for flood defence and drainage purposes (Section 164 and Schedule 25 of the Water Resources Act 1991);
- Water – Consents for Discharges (Section 166 of the Water Industry Act 1991);
- CL:AIRE Definition of Waste: Development Industry Code of Practice;
- Environmental Permit including Environmental permit for water discharge or waste/registration of an exempt waste operation

(The Environmental Permitting England and Wales (Amendment) Regulations 2013);
- Hazardous Waste (Hazardous Waste (England and Wales (Amendment) Regulations 2013);
- Water Framework Directive Compliance (Water Environment (Water Framework Directive) (England and Wales) Regulations 2003);
- Approval of health and safety codes of practice (Health and Safety at Work Act 1974);
- Prohibition on obstructions in watercourses (Section 23 of the Land Drainage Act 1991);
- Prohibition on removal of certain hedgerows without consent (Hedgerow Regulations 1997);
- Temporary Traffic Regulation Order (Re. traffic management) (Section 14 of the Road Traffic Regulation Act 1984);
- Construction Noise Prior Consent (optional) (Section 61 of the Control of Pollution Act 1974);
- European Protected Species Licence (The Conservation of Habitats and Species Regulations);
- Power to grant licences (Section 16 of the Wildlife and Countryside Act 1981);
- Licence to authorise work affecting badgers or interfering with badger setts (Section 10 of the Protection of Badgers Act 1992)
- Wireless telegraphy licence (Section 8 of the Wireless Telegraphy Act 2006);
- Party Wall (Section 6 of the Party Wall etc. Act 1996).

1.4.43 The Panel has taken the need for these consents and their timing relative to the proposed development programme into account throughout the examination.

Examination closure

1.4.44 The Panel completed its examination of the application at 2pm on 5 February 2015. As required by s99 PA2008, the Panel wrote to all IPs on 6 February 2015 to inform them of the closure of the examination [PD-051].

1.5 THE STRUCTURE OF THIS REPORT

1.5.1 The principal functions of this report have been outlined in this introduction. However, they can be summarised and are located in the remainder of this report as follows;

- **Chapter 2** records the main features of the application proposal, the site and its physical context.
- **Chapter 3** records the legal and policy context within which the application has been examined.
- **Chapter 4** sets out the Panel's findings and conclusions in relation to policy and factual issues, within an issues-based framework.

- **Chapter 5** sets out the Panel's findings and conclusions relevant to Habitats Regulations Assessment (HRA).
- **Chapter 6** sets out the Panel's findings and conclusions relevant to compulsory acquisition.
- **Chapter 7** sets out the Panel's findings and conclusions in relation to the Panel's examination of the draft Development Consent Order.
- **Chapter 8** summarises the Panel's conclusions and recommendation to the SoS.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.0 INTRODUCTION

2.0.1 This chapter of the report:

- describes the application proposal, its site and its setting, building on the summary description in paragraphs from section 1.2 above;
- identifies the relationship of the application proposal to English territorial waters and land and to other use and development of water and land;
- describes the proposed works;
- describes amendments to the application proposed during the examination process and the action taken in respect of these; and
- records the relationship between the application proposal, the Dogger Bank Creyke Beck and Dogger Bank Teesside C&D Offshore Wind Farms.

2.1 THE APPLICATION

2.1.1 The application proposal and its context are described in the applicant's covering letter [APP-001], application form [APP-002] and in the Environmental Statement [APP-065-162]. The application was made by Forewind for development consent to construct two offshore wind turbine electricity generating stations and associated offshore infrastructure (described together in this report as offshore wind farms), with a total installed capacity of up to 2.4GW. Each offshore wind farm would have a total installed generating capacity of 1.2GW. Together these developments are known as Dogger Bank Teesside A and B. Each offshore wind farm is proposed to have its own distinct group of wind turbine generators, described in this report as an array. It would also have its own connection to the UK onshore electricity transmission system, set in a shared cable corridor, described further below.

2.1.2 Dogger Bank Teesside A and B in turn forms the second stage of a proposed three stage development of the Dogger Bank zone by the applicant for a total of six offshore wind farms. The first stage comprises the now decided application for Dogger Bank Creyke Beck A & B and the third stage comprises proposals for the Dogger Bank Teesside C & D offshore wind farms, for which an application or applications have yet to be submitted. Further detail of these additional proposals is provided in section 2.4 below.

The site

2.1.3 The application site is identified in the offshore and onshore location plans submitted with the application [APP-007-008], as more recently updated in final revised plans submitted on 27 January 2014 at Deadline IX. An overview of the location, extent and environs of the

application site and grid connection alignment are shown in ES Chapter 5 Project Description [APP-071] in sections 2.1 - 2.2 (offshore elements) and section 2.3 (onshore elements). A detailed description of offshore seabed geology and site bathymetry is contained in ES Chapter 9 Marine Physical Processes [APP-087-091]. A detailed description of onshore land uses can be found in ES Chapter 26 Land Use and Agriculture [APP-143].

The marine setting

2.1.4 The wind turbines which it is proposed will generate the energy are around 120km offshore and the application proposal includes the HVDC (HVDC) export cables bringing the generated electricity onshore. Given the different nature of inshore and offshore activities in the marine environment, it is useful to define what is considered as inshore and what is considered as offshore in this report. Inshore is defined as being from all those waters from the shore as far out as the limit of English territorial waters, that is to say up to and including 12 nautical miles out from the shore. Offshore is defined as being all those waters more than 12 nautical miles offshore.

2.1.5 The marine setting for the array development proposed in the application is the Dogger Bank. This is a large bathymetric feature in the North Sea, approximately 300km long and characterised by relatively shallow water depths ranging from 78m below lowest astronomical tide (LAT) to 20m below LAT. It is formed from a core of Pleistocene sediment, covered by a thin (approximately 3m to 20m) layer of Holocene sediments and sands, as described in ES Chapter 9 Marine Physical Processes. It represents a 'paleo-landscape' that was above sea level at the end of the last glaciation and then inundated thereafter as sea levels rose to their current interglacial level [APP-087-091]. Seabed sediment distribution is predominantly sandy, with patches of gravel, mud and pockets of sub-surface clay.

2.1.6 A substantial body of the Dogger Bank in UK waters has been identified for offshore wind farm development by the Crown Estate following a strategic screening process - the Dogger Bank zone. This zone is 8,369km^2 in extent and has water depths ranging from 20 to 65m below LAT. The zone is centrally located within the North Sea, remote from UK and mainland European coasts. It is approximately 120km from the closest UK shore and similar or greater distances from the coastlines of the Netherlands, Germany and Denmark. The eastern zone boundary is adjacent to the UK marine boundary with the Netherlands and Germany and close to the marine boundary with Denmark [APP-033 fig 1.1].

2.1.7 ES Chapter 16 section 4.2 identifies that there are several navigational features present within the Dogger Bank zone [APP-121-122]. There is an oil well located within the Dogger Bank Teesside A development boundary and a number of wells within the zone surrounding the A & B array areas and the cable corridor. There are no oil and gas platforms within the Dogger Bank Teesside A and B array areas. A number of

platforms can be found within approximately 50km of the array areas, including the Cavendish, Munro and Tyne platforms. Nearby planned gas field developments include the Cygnus Alpha and Bravo platforms.

2.1.8 There is an aggregate dredging application area approximately 28km to the north west of Dogger Bank Teesside B array area. There are also aggregate application areas to the south of the proposed export cable corridor and south west of the Dogger Bank Teesside B array area.

2.1.9 There is a charted wreck in Dogger Bank Teesside A and one lying on the northern boundary of the area. A number of other wrecks are located to the south of the area where the export corridor enters the zone.

2.1.10 Shipping activity within the area predominantly consists of cargo vessels and fishing vessels, making up approximately 80% of all vessels.

2.1.11 Several shipping routes intersect the Dogger Bank Teesside A and B array areas, with the most frequently used being that between the Humber and Baltic, which transits through the south of the Dogger Bank Teesside A and B areas. Due to the relatively shallow sea depths limit the use of this sea area by larger (Suezmax and Capesize) vessels[8] and the usage made of it by commercial vessels remains relatively low [REP-020].

2.1.12 The Dogger Bank has been recognised for many years as biodiverse marine area [APP-106-113][APP-114-118] and a highly productive fishery (ICES rectangles 38F2 and 39F2), traditionally fished by the nations surrounding it [APP-119-120]. Large takes of herring for human consumption and fishmeal have led to substantial declines in that species and the closure of that fishery for significant periods. Mackerel is fished for human consumption and Sandeel, largely for fishmeal. Plaice and sole are beam trawled.

2.1.13 The biodiversity of the Dogger Bank has been responded to by the identification of a large area of UK waters as the Dogger Bank Site of Community Importance (SCI) (see Chapter 5 below). The physical characteristics of the site are described as: 'Gravelly sand. Sand. Non-vegetated. Full salinity. Intermediate coastal influence. Sandy mounds.'

2.1.14 Its quality and importance is identified as deriving from:

'Sandbanks which are slightly covered by sea water all the time

[8] Suezmax vessels are currently defined as vessels of a draught able to be accommodated within the current minimum depth of the Suez Canal (20.1m /66' draft. Capesize is a description given to vessels of greater than Suezmax draft which have to utilise the Cape of Good Hope or Cape Horn routes to pass between the Atlantic and the Indian or Pacific Oceans.

- for which this is considered to be one of the best areas in the United Kingdom.'[9]

2.1.15 The entirety of the proposed arrays and approximately 25% of the proposed offshore cable corridors are located within the Dogger Bank SCI.

2.1.16 Along the cable corridor the seabed is mainly sandy, with patches of mud and gravel, mixed sediment and outcrop rock. Between 5km and 25km to shore the corridor passes through mudstone with cobbles and boulders present.

2.1.17 The cable corridor affects waters used for inshore fisheries, where Nephrops (scampi) is the key economic species.

The coastal and onshore setting

2.1.18 The proposed cable corridors make landfall on the north east coast between Redcar and Marske-by-the-Sea [APP-012, 014]. The coastal geology in this location is characterised by undefended vegetated till cliffs, sand beaches that front the slopes and occasional outcrops of underlying bedrock and patches of shingle. A geological feature known as Red Howles is in close proximity to the landfall site, this being one of a small number of outcrops of the Calcareous Shale member of the Redcar Mudstone Formation and is a regionally important geological site (RIG). This feature was located (although at the time it was covered over by sand) by the Panel during an accompanied site visit on 11 November 2014 [HR18-HR20]. The preservation of this feature was a concern of the Tees Valley RIGS group during the examination. This matter is discussed in Chapter 4 below.

2.1.19 The onshore cable alignments continue in a predominantly westerly direction, crossing the coast road (A1085) before passing through arable land and then under the Redcar - Saltburn railway line at Blacks Bridge and crossing the A174 from north to south by HDD. They pass through predominantly rural areas close to New Marske and the village of Yearby, generally avoiding established settlements and freestanding farm buildings. The topography of the area is low lying, relying on a network of drainage channels. The Panel visited estate and agricultural land affected by compulsory acquisition in these locations [HR-003, 047, 053].

2.1.20 The alignments then re-pass under the A174 (from south to north) by Horizontal Directional Drilling (HDD) and enter the Wilton Complex. This was initially developed as an integrated petrochemicals facility by ICI, but now operates as a campus hosting a range of petrochemical, chemical, fuel, energy, gas and production research businesses in a number of ownerships. These businesses are served by a shared internal infrastructure network controlled by Sembcorp Utilities UK Ltd

[9] Source: JNCC website: Natura 2000 Standard Data Form.

(Sembcorp), providing vehicular and rail access, electricity, water, gas, oil and brine and distributing products and by-products that form inputs and feedstocks for each manufacturer's processes.

2.1.21 The HVDC cable alignment predominantly follows an internal access road and infrastructure corridor before entering arable land within the freehold of Sembcorp Utilities UK Ltd (Sembcorp), where the proposed converter station(s) will be sited. This site falls within the landscaped perimeter of the Wilton Complex. The HVAC cable alignments then exit the Wilton Complex and pass under Greystone Road and Kettle Beck via HDD. The Panel visited the Wilton Complex [HR-015].

2.1.22 From this location, the alignment crosses arable land before entering the existing National Grid Substation at Lackenby, where the grid connections are proposed to be made. The Panel visited agricultural land affected by compulsory acquisition in these locations [HR-003, 021] and also viewed existing dwellings in the setting of the substation.

2.1.23 The broader context for the application site on land is enclosed by the River Tees to the north, bounded on both banks by significant port and manufacturing uses. The north shore hosts petrochemical and gas reception facilities, connected by pipeline to the Wilton Complex. Teesport on the south shore is a major bulk cargo and container port, importing iron ore for the steel industry and exporting steel products and potash. Alongside Teesport, large areas of land are devoted to former British Steel Corporation steelworks and associated plant, now owned and operated by Tata Steel and Sahaviriya Steel Industries UK Ltd.

2.1.24 As is normal in applications for offshore wind farm development, no commitments have been made by the applicant to the selection of a particular port for servicing purposes, or particular suppliers for steel componentry and fabrication. Teesport and the nearby steel industries offer potential synergies with development of this sort.

2.1.25 To the south and east, a high and partly wooded scarp (the Cleveland Hills) forms a dramatic northern landscape boundary to the North York Moors National Park. To the south of this boundary lie high and open moorlands. To the north lie the mingled lowland agricultural and industrial landscapes proposed to be traversed by the cable alignments.

2.1.26 Redcar is the main urban centre within the setting of the application site onshore, offering a wide range of urban services to its population. Smaller coastal settlements are found at Marske-by-the-Sea and Saltburn-by-the-Sea, the latter of which is a small and characterful 19th century seaside resort. These urban centres are largely unaffected by the application proposals.

The applicant and the proposed delivery structure

2.1.27 The applicant is a single entity, Forewind, an incorporated joint venture consortium made up of four international energy companies; RWE Innogy UK Limited, SSE Renewables Developments (UK) Limited, Statoil Wind Limited and Statkraft UK Limited [APP-030][APP-033]. However, the applicant does not necessarily intend to own or develop the application proposal. It is a key element of the application and the design proposals that it contains that each of the two arrays could be capable of both physical delivery and ownership either together or separately [APP-030]. The draft DCO submitted with the application is structured on that basis [APP-028-029].

2.1.28 The proposed development and ownership structures provide for two separate entities, each proposed to benefit from the right to develop one array and associated development.

- Doggerbank Project 2 Bizco Limited (Project 2 Bizco) is proposed to be the undertaker for and developer of the Dogger Bank Teesside A project; and
- Doggerbank Project 3 Bizco Limited (Project 3 Bizco) is proposed to be the undertaker for and developer of the Dogger Bank Teesside B project [APP-030].

Project 2 Bizco and Project 3 Bizco are referred to together in this report as the 'Bizcos'.

2.1.29 At the time of the application, the ownership and control of the Bizcos was the same as that of the applicant, Forewind. However, the precise ownership of each Bizco at the point development might commence was not committed to in the application - essentially providing the applicant with a flexible capability to structure or dispose of each Bizco as it sees fit, subject to SoS consent for transfer of benefit as provided for in article 8, should the DCO be granted [APP-030]. The applicant envisages that the Bizcos could be structured in a way that would enable the development and ownership of the offshore generating assets to be subdivided, but again this would be subject to the SoS consent under article 8 [REP-503].

2.1.30 In turn, the application envisages that each array would access a transmission connection at an offshore metering point, with a cable route from that point to a grid connection on land being owned and operated by an offshore transmission owner (OFTO) in due course[10]. Again subject to SoS consent for transfer of benefit as provided for in article 8, it is envisaged that these assets could be constructed by a Bizco and transferred to an OFTO, or constructed by an OFTO and the draft DCO provides accordingly.

[10] The OFGEM regulatory framework for offshore transmission anticipates the separation of offshore transmission assets from offshore generation assets and the transfer to and operation of transmission assets by an offshore transmission owner (OFTO).

The draft DCO

2.1.31 The application proposal is intended to be delivered primarily at sea, which is where the proposed wind turbine generators would be located. Works to connect the offshore wind farms to the UK electricity transmission system (the grid) would be carried out both at sea and on land. The application documentation refers to 'land' as comprising parts of the seabed and water column in addition to 'terrestrial' land (in the more conventional sense of that word) above mean low water springs. References to land in this report adopt the same usage as references to land in the application documents.

2.1.32 The application proposals are sought to be authorised by powers provided in a draft Development Consent Order (DCO) submitted with the application [APP-028] and on land the extent of which is shown within the Order Limits on the submitted onshore and offshore Works Plans [APP-013, 014].

2.1.33 The ownership and delivery structure described from paragraph 2.1.27 above is mirrored within the draft DCO by four draft deemed marine licences (DMLs) under s66 (1) of the Marine and Coastal Access Act 2009 (the 2009 Act) [APP-018-019] [APP-028-029]. A separate draft DML is provided for each of the two Bizcos' intended generation assets (Schedule 7 Parts 1 and 2) and for each of the two sets of transmission assets intended to be transferred to the OFTOs in due course (Schedule 7 Parts 3 and 4, again noting that transfer (subject to SoS consent under article 8) might be before or after construction.

2.1.34 The application describes the entire development within minimum and maximum design parameters that are summarised below. Planning evaluation and Environmental Impact Assessment have proceeded on the basis of a Rochdale Envelope approach in which aggregate worst case effects are assessed. Within the draft DCO [APP-028], each Work relating to both Dogger Bank Teesside A project and Dogger Bank Teesside B project is described within Schedule 1 Part 1 (authorised development). Ancillary development is set out in Schedule 1 Part 2. Requirements setting out detailed design parameters are set out Schedule 1 Part 3 and include wind turbine generator specification and layout rules.

The offshore works

2.1.35 The application proposes the development of the two offshore arrays. Each array and the associated generation assets necessary to support it forms an offshore wind farm with its own individual designation:

- Dogger Bank Teesside A; and
- Dogger Bank Teesside B.

They would be entirely within the Crown Estate Zone 3 which has an overall area of 8,639km^2, with its outer limit broadly coincident with the limit of the UK continental shelf. The combined array areas would

be located between 125km and 290km off the north-east coast of England [APP-002] [APP-013].

2.1.36 Dogger Bank Teesside A is located within the eastern portion of the zone. The array area is shown in Figure 2.3 with key characteristics set out in Table 2.2 of ES Chapter 5 [APP-071]. The array covers an area of 560km^2, the closest point to the UK mainland is 196km and the predominant water depth ranges from 20m to 35m below the lowest astronomical tide (LAT).

2.1.37 Dogger Bank Teesside B is located to the west of Dogger Bank Teesside A and extends further to the south and therefore closer to the UK shore. The array area is shown in Figure 2.4 and Table 2.4 of ES Chapter 5 [APP-071]. The array area is slightly larger than that for project A at 593km^2 and closer to the UK shore at a distance of 125km at the closest point. Water depths are similar, ranging from 20m to 40m below LAT.

2.1.38 The ES non-technical summary at Table 1.1 [APP-162] summarises the parameters for each offshore wind farm and the maximum total for Dogger Bank Teesside A and B as a whole. The maximum total for the application proposal is as follows, with the maximum per individual offshore wind farm being half the combined total in each case:

- 400 wind turbine generators;
- 8 offshore collector substations;
- 2 offshore converter substations;
- 4 offshore accommodation platforms; and
- 2 onshore converter stations

2.1.39 Each wind turbine generator would have a maximum height of 315m when measured from highest astronomical tide (HAT) to the zenith (the height of the tip of the longest blade when in a vertical position pointing upwards). The maximum rotor diameter is proposed to be 215m.

2.1.40 The wind turbine generators in each array would be connected by inter-array cabling totalling not more than 1900km and inter-platform cabling totalling not more than 640km. These would connect each offshore wind farm to an offshore converter substation. These would also be the metering point at which generated electricity would pass from the generation asset into the offshore transmission system.

2.1.41 Offshore associated development is proposed to include two sets of HVDC (HVDC) export cables to connect the arrays via a 2km wide marine cable corridor to a coastal landfall point on the foreshore between Redcar and Marske-by-the-Sea in the Borough of Redcar and Cleveland [APP-013].

2.1.42 The HVDC export cables exit each array area separately but come together shortly after exiting the zone to share a corridor. From that point onwards the two cables run parallel and adjacent to each other, until they reach the landfall point. The order limits for the offshore

element of the export cables is situated within a predominantly 1.5km corridor.

The onshore works

2.1.43 The application proposes onshore associated development. From their landfall, the HVDC cables are proposed to follow an underground onshore transmission alignment approximately 7km west to a converter station compound, proposed to be situated within the Wilton Complex, a large specialist industrial estate hosting petro-chemical and energy industry facilities and through which the cable alignments are sought to pass. (There is a fuller description of the Wilton Complex in section 2.5 below.) The compound would contain the equipment necessary to convert the DC output to alternating current (AC). From the compound, a short underground onshore HVAC alignment would pass some 2km further west to connect the electricity output to the existing National Grid Electricity Transmission (NGET) substation at Lackenby [APP-012].

Nationally Significant Infrastructure Project

2.1.44 As applied for, as documented and as proposed to be varied (see section 2.2 below), the application is for an offshore generating station over 100MW in capacity. Each offshore wind farm (A & B) is therefore a Nationally Significant Infrastructure Project (an NSIP), and falls to be considered under s14(1)(a) and s15(3) PA 2008. Multiple NSIPs may be considered under one application and one DCO. The application met the s55 tests at acceptance and the Panel confirm the application is an NSIP.

2.2 MINOR CHANGES TO THE APPLICATION AND ERRATA

2.2.1 This section records changes to the application were proposed by the applicant at Deadline III (3 September 2014) [REP-150] and Deadline IV (23 September 2014) in the examination timetable [REP-219-223]. It also addresses errata in application documents provided to the examination by the applicant.

Minor changes

2.2.2 At Deadline III, changes were proposed to the Book of Reference, to record the fact that, since the pre-application stage, an entity called GrainCo had taken a long lease over a parcel of land within the Wilton Complex to develop a grain store and drying facility. It was submitted to the Panel that that substantial physical development had taken place within this lease area, on land sought by the applicant for the HVAC cable alignments.

2.2.3 The Panel held an accompanied site inspection on 15 October 2014. It found that a grain store and drying facility had been developed on the GrainCo leasehold estate and was operational. Related bio-ethanol

and CO_2 facilities receiving feedstock from GrainCo were also found to be both developed and operational [HR-015].

2.2.4 The applicant's Deadline III response identified that, due to the GrainCo development, if the current HVAC cable alignment were to remain as set out in the initial application, it may cause significant disruption to the GrainCo facility, and that potentially a change to the application might need to be sought.

2.2.5 At Deadline IV the applicant's submissions contained two proposals for formal changes to the application.

2.2.6 **The first change** was that foreshadowed at Deadline III in respect of land sought for cable alignments within the Wilton Complex. The effect of this change in summary terms was to exclude land within the original application site (Plots 58B and 58F in the Land Plans [APP-012]) and to include additional land (Plots 58X and 58Y shown on revised Land Plans [REP-144, 145]) that was not within the original application site. The purpose of the change was to provide for a revised combined HVAC cable corridor on undeveloped land and to enable the applicant's works to avoid the area of the GrainCo lease. Approximately 180m length of the cable routes would be relocated to a position approximately 50m southeast of the original alignments. The working corridor through the area of realignment would decrease from the normal 39m corridor for two separate cable alignments, to an 18m shared easement. Whilst this would make construction more difficult in this location, it would enable the applicant to avoid substantial disruption to the GrainCo lease and operation.

2.2.7 **The second change** was not previously foreshadowed at Deadline III. It related to the intended crossing point between the proposed cable alignment and the separately proposed and yet to be consented York Potash mineral transport system alignment. The effect of this change in summary terms was to seek to exclude some land within the original application site (part of Plots 40A and 40D on the Land Plans [APP-012] as shown on revised Land Plans [REP-144, 145]). The purpose of the change was to respond to new design information about the proposed York Potash mineral transport system alignment.

2.2.8 The original design and land requirement had assumed that these alignments might cross each other with relatively limited vertical separation, meaning that horizontal directional drilling (HDD) and hence a wide corridor might be required to pass the applicant's proposed HVDC cable alignments across the proposed York Potash mineral transport system alignment. However, better information about the York Potash proposal (see section 2.3 below) had clarified that it was intended to pass beneath the applicant's proposed HVDC cable alignments in a deep tunnel and that there would be no HDD requirement as a consequence. It followed that an approximately 540m section of the HVDC onshore export cable alignments could be delivered in a working width reduced from 50m to 36m, the standard

width for an alignment where cut and cover is to be used and HDD is not to be employed.

2.2.9 In respect of the first change, additional land was sought by the applicant. The Panel took account of the requirements set out in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the CA Regulations). These regulations set out a procedure which applies where there is a proposal to include in an order granting development consent a provision authorising the compulsory acquisition of additional land, and a person with an interest in the additional land does not consent to the inclusion of the provision.

2.2.10 Whilst Sembcorp Utilities UK Ltd (Sembcorp), the freeholder of the additional land sought for the first change had consented to the change [REP-234] it was not clear to the Panel whether consent had been received from M&G Solid Fuels LLP, another entity benefitting from a lease in the Wilton Complex who also appeared to hold an interest in the additional land.

2.2.11 However, following further written and oral evidence from the applicant it is apparent that, following further checks by the applicant, M&G Fuels LLP do not have any rights over the additional land, and as a result have now been removed from the Book of Reference. The Panel is satisfied that M&G Fuels LLP do not need to consent to the inclusion of the additional land within the Order Land, and that the Compulsory Acquisition Regulations are not engaged. Whilst the CA regulations were not engaged, it remained the case that all IPs must be informed of the change and have a reasonable opportunity to comment.

2.2.12 At Deadline IV, the applicant proposed to carry out a consultation procedure that would engage with persons affected by all of the proposed changes and enable their views to have been considered by the Panel – with final responses from this process to be provided to the Examining Authority by 20 November 2014. This informal process was considered and agreed upon by the Panel via a procedural decision issued on 1 October 2014 [PD-034].

2.2.13 In addition, the Panel formally wrote to all IPs and invited persons on 1 October 2014 to explain the proposed change, to give them the opportunity for written comment and to set a timetable for the subsequent issue of a procedural decision on the materiality of the change [PD-034].

2.2.14 Responses were received from the following parties:

- The Bat Conservation Trust
- The Environment Agency
- English Heritage
- Natural England
- Public Health England

No significant issues were raised which related directly to any impacts arising from the change.

2.2.15 On the basis of these submissions the applicant made the following representations on the effects of the changes:

(a) that with reference to Bernard Wheatcroft Ltd v SSE [1982] JPL (p37) it would not prejudice any interested party or deprive any party with the opportunity of such consultation.
(b) that having regard to paragraph 106 of the 'Guidance for the examination of applications for development consent' (DCLG, April 2013), the amended Order limits does not result in a new project, nor does it constitute a material change to the projects for which development consent is being sought.

2.2.16 With specific regard to plots 58B and 58F the applicant made further points, as follows:

(c) the only party with an interest in the land supports the proposed change and that under s123(3) of the PA2008 a DCO can be changed to include powers over additional land
(d) the application has been environmentally assessed, and a supplementary assessment submitted for those factors that are considered to have the potential to change, namely Landscape and Visual impact and Terrestrial Ecology. No additional impacts were identified beyond that previously reported within the ES and no additional mitigations measures are proposed.

2.2.17 With regard to plots 40A and 40D, the applicant stated that:

(e) The application had been environmentally assessed and that the reduction in the working width and realignment of the compound is within the parameters assessed, and will not give rise to any new or different effects.

2.2.18 Taking account of the evidence and for the reasons set out above, the Panel acknowledges that that the proposed changes to the application do require additional land, but that all relevant affected persons have provided consent and so the CA Regulations are not applicable. The Panel also concludesthat the proposed changes are of a minor nature and do not materially change the application from that which was originally submitted and that the application as changed could be examined within the statutory examination timetable.

Presentation of plans and other documents

2.2.19 During the examination the Panel requested that the applicant provide a systematic explanation of the various plans and documents contained within the application and discussed during the hearings. A 'Hierarchy of Plans' document was supplied at Deadline VI [REP-337] and updated at Deadline VII [REP-412] and Deadline IX [REP-494]. This identifies the inter-relationship between the key plans and documents relevant to securing the mitigation identified in the original

application and consolidated at the Panel's request in the Summary of Mitigation and Monitoring [REP-247].

2.2.20 The following documents were introduced during examination up to Deadline IX:

- the hierarchy of offshore and onshore management plans [REP-494]
- the draft fisheries liaison plan [REP-436]
- the in principal monitoring plan [REP-492]
- the disposal scenario statement [REP-489]

In addition to these, at Deadline IX, the applicant made revisions to ensure that all plans and documents referenced in the DCO and/or for submission to and certification by the SoS were up to date and reflected the positions reached in the examination. These were submitted in a 'List of all final documentation that accompanies the draft DCO' [REP-496].

2.2.21 Each of the documents to be submitted is named and defined in the draft DCO in article 2 (interpretation) and/or in paragraph 1 (interpretation) of each Deemed Maine Licence (DML).

Application document errata

2.2.22 The 'List of all final documentation that accompanies the draft DCO' [REP-496] submitted at Deadline IX contains a number of discrepancies. In particular:

- plans were listed with only one drawing number identified e.g. Offshore Works Plan F-OFL-MA-802 Version 2. This set of drawings contains Sheets 1-09, 9 drawings in total;
- the drawing number referenced for Offshore Nature Conservation Sites was F-OFL-MA-805 version 2 – it should have read 807 version 3;
- the drawing number referenced for the Location Plan Offshore was F-OFL-MA-807 version 2 – it should have read 805; and
- In addition plans submitted with the original application identifying the areas covered by Marine Licences [APP-018,019] and the location and extent of Creyke Beck [APP-015] were omitted from the list but should be included.

2.2.23 All of the plans intended to be updated were submitted into the examination ahead of its closure, but this 'master list' does not accurately reflect the final situation. The Panel based its report and recommendations upon the submitted documents as set out in the published Document Library (which does correctly follow and record the changed versions) and as recorded in the draft DCO and DMLs.

2.3 THE APPLICATION IN THE EXAMINATION PROCESS

2.3.1 The description of the application provided in these submitted application documents as summarised in section 2.1 above, together

with the description of the minor changes to it summarised in section 2.2 above, were not a matter of dispute in the examination. The Panel has been able to examine the application on the basis of the submitted and the amended documentation.

2.4 RELATED OFFSHORE WIND FARM PROPOSALS

2.4.1 As set out in the applicant's ES Introduction [APP-066], in January 2010 Forewind was awarded rights to develop offshore wind capacity within the Dogger Bank zone, identified by the Crown Estate as part of their Round 3 lease process.

2.4.2 Forewind initially divided the zone into four tranches (A, B, C and D). that do not relate closely to the development layout of the zone as currently proposed. Figure 1.1 of the ES Introduction [APP-066] illustrates the relationship between the various tranches, and shows the position of the Dogger Bank Teesside A&B arrays and export cable with respect to these.

2.4.3 In addition to the Dogger Bank Teesside A&B application, there are two further applications proposed by Forewind Ltd within the Dogger Bank zone. These projects have been named 'Dogger Bank Creyke Beck' and 'Dogger Bank Teesside C&D'. The relationship of these applications to the Dogger Bank Teesside A&B application is set out in the section below.

Dogger Bank Creyke Beck

2.4.4 An application for the first stage of Dogger Bank Zone development was submitted to the Planning Inspectorate for examination on 29 August 2013, by Forewind, the same applicant as for the application considered in this report. Similarly to the current application, this application comprises two separate projects named Dogger Bank Creyke Beck A and Dogger Bank Creyke Beck B (collectively known as Dogger Bank Creyke Beck).

2.4.5 The Dogger Bank Creyke Beck A & B arrays are shown in relation to the Dogger Bank Teesside A and B arrays in Figure 2.5 [APP-071 ES Chapter 5] and in detail in the Dogger Bank Creyke Beck and Teesside A & B – Extent of Works Plan [APP-015]. Dogger Bank Creyke Beck A is located to the South West of the two Dogger Bank Teesside Arrays, with Dogger Bank Creyke Beck B directly to the West.

2.4.6 The Dogger Bank Teesside and Dogger Bank Creyke Beck projects have separate and distinct transmission connection corridors. Whilst the marine corridors interact near to the Dogger Bank Creyke Beck A array area, they then diverge. The Dogger Bank Teesside cable corridor provides for a landfall and transmission system connection on Teesside, north of the North York Moors National Park. The Dogger Bank Creyke Beck cable corridor makes landfall some 88km to the south, at Ulrome near Bridlington in East Yorkshire, with a grid connection at the Creyke Beck substation near Cottingham, between

Kingston upon Hull and Beverley, also in East Yorkshire. It passes to the south of the North York Moors National Park area.

2.4.7 The Panel has considered cumulative and in-combination impacts arising from the interaction between Dogger Bank Teesside A&B and Dogger Bank Creyke Beck. Question 5.4 of the Panel's second written questions sought to ascertain whether impacts might arise if construction of the two projects occurred simultaneously [PD-036]. Conclusions on these points are reached in Chapters 4 & 5 below.

2.4.8 On the date the Dogger Bank Teesside A&B examination closed, the Dogger Bank Creyke Beck application had not yet been decided by the SoS. The Panel is aware that the SoS has now made a decision on the Dogger Bank Creyke Beck application. However, as the Panel had no power to reopen the examination and seek representations on the SoS's decision it has not, as a matter of procedural fairness, been taken into account by the Panel in reaching its findings and conclusions, because IPs would not have been able to make representations which took that decision into account and responded to it. Nor has regard been had to the application documentation and examination submissions relating to the Dogger Bank Creyke Beck project, save for those documents that were specifically submitted to the Dogger Bank Teesside A&B examination by the applicant.

Dogger Bank Teesside C & D

2.4.9 Dogger Bank Teesside C & D are the two offshore wind farms proposed by the applicant as the third stage in the development of the Dogger Bank zone. Figure 1.1 of the ES Introduction [APP-066] illustrates the location of this proposal in relation to the application proposal. Whilst this proposal is likely to be a NSIP, by the close of this examination it had not yet become the subject of an application or applications to the Planning Inspectorate, although the Panel has noted that the applicant submitted a response to Redcar and Cleveland Borough Council's draft local plan[11] which included an indicative plan of the Dogger Bank Teesside C&D onshore cable route [REP-472].

2.4.10 The Panel had considered possible cumulative and in-combination impacts, and at Question 5.5 of the ExA's 2nd written questions asked the applicant to explain the cumulative impact of a concurrent development of Dogger Bank A&B and Dogger Bank Teesside C&D [PD-036]. Conclusions on these points are reached in Chapters 4 & 5 below.

2.5 OTHER MAJOR USES AND PROPOSALS

2.5.1 There are four major existing or proposed uses within the vicinity of the application site on land, which interact with or have been

[11] This draft plan has been withdrawn and so is not progressing towards adoption (see Chapter 3 below).

considered to have the potential to interact with the application proposal.

- the Wilton Complex;
- the Teesside steel industry;
- the Cleveland Potash Boulby Mine; and
- the York Potash projects.

The Wilton Complex

2.5.2 The Wilton Complex (also referred to as Wilton International) is a large industrial / manufacturing site located between Redcar and Middlesbrough, to the south of the steel-making enclave and Teesport described above and to the north of the A174 Redcar - Middlesbrough road. Its significance to this application is that the proposed converter station compound is sited on land adjacent within the complex, necessitating the passage through it of the proposed HVDC and HVAC cable alignments.

2.5.3 Initially developed by the former Imperial Chemical Industries (ICI), the Wilton Complex commenced operation in the 1950s as a major integrated petrochemical facility, supported by internal electricity generation facilities. Following the disaggregation of ICI in around the year 2000, the complex continues to contain major petrochemical process plant including one of three operating steam crackers in the UK (the others are located at Grangemouth and Mossmoran in Fife, Scotland).

2.5.4 Its operation is now split between interested party Sembcorp Utilities UK Ltd (Sembcorp), freeholder and integrated infrastructure provider to the entire complex and a series of individual process and related industrial undertakings. Those involved or referred to in the examination are:

- SABIC UK Petrochemicals Ltd (SABIC);
- GrainCo; and
- M & G Solid Fuels Ltd.

2.5.5 The complex has diversified to include:

- petrochemical production (including SABIC);
- plastics production (eg low density polyethylene) (including SABIC);
- bioethanol and CO_2 production;
- energy and bio-industry feedstock and grain reception, storage and drying (including GrainCo);
- short rotation coppice growing;
- energy industries meeting the energy needs of the complex and other consumers (the Teesside Power Station gas generation facility is currently being decommissioned but biomass, energy from waste and onshore wind energy facilities are either operational or under development);

- solid fossil fuel reception, processing and distribution (M & G Solid Fuels Ltd.); and
- office and production research facilities.

2.5.6 The existing SABIC Olefins 6 facility - the cracker - is located adjacent to proposed HVDC cable works on Land Plan plot 52A. It is required to undergo periodic maintenance work on a six year cycle for which access and laydown areas across and adjacent to this land are required. These works proceed without planning permission being required on the basis that they are operational maintenance and not development [REP-313].

2.5.7 A major upgrade is proposed to occur in 2016 that is considered to be development and for which SABIC intend to make an application for planning permission to Redcar and Cleveland Borough Council [REP 313]. This proposal would change the cracker feedstock from naphtha to ethane and would involve:

'the creation of new ethane import infrastructure comprising an import terminal and storage tank at the North Tees site [on the north bank of the River Tees / Teesport] and a new interplant pipeline between North Tees and the Olefins 6 plant. In addition, significant changes to the Olefins 6 plant are required in order to process the new feedstock. These on-plant changes will include the installation of a new distillation column and ancillaries at the south edge of the plant as well as changes to existing furnaces, compressors, heat exchangers and control systems.

'Discussions have been underway with Redcar and Cleveland Council. These have concluded that the 2016 scheme does require planning permission [...] A separate planning application for the works at the North Tees has already been made.' [REP-295, 313]

2.5.8 These proposed works entail access for additional labour and plant and the movement of large process components within the Wilton Complex, and will thus constitute a major construction and engineering project in its own right involving up to 1,000 additional workers and 30 cranes.

2.5.9 SABIC is concerned to ensure that its plant is able to undergo planned periodic maintenance and upgrades during the construction, operation and decommissioning periods for the application proposal. [REP-295, 313]

2.5.10 The Wilton Complex contains significant areas of serviced but undeveloped land on which industry with a chemicals or renewable energy focus is currently encouraged to develop as part of the Tees Valley Enterprise Zone. Sembcorp is concerned to ensure that development and operation of the application proposal does not adversely affect existing operations or the potential of those future development plots. [REP-129].

2.5.11 Raw materials are imported to and exported from the Wilton Complex via marine terminals in Teesport, by pipeline, by road and by rail. The Wilton Complex lies at the centre of the UK ethylene pipeline distribution system, which includes the Trans-Pennine Ethylene Pipeline (T-PEP), a facility linking Wilton to Runcorn, Holford and Stanlow in Cheshire, operations at Wilton are potentially affected by the application proposal [REP-295]. The complex also utilises and transports saturated brine and drainage water by pipelines that are potentially affected by the application process [REP-295].

2.5.12 The Wilton Complex contains an extensive network of internal infrastructure, providing gas, electricity, water, steam, drainage, pipe and road connectivity, moving inputs, products, by-products and wastes between different production facilities. Some of this infrastructure is prominently located above ground in gantry mounted cables, pipes and ducts. Some is in the form of buried pipes, drains and cables. There is a complex structure of legal relationships set out in property and contractual documents which underpin the provision and receipt of these complex infrastructure services and the various producers located at the Wilton Complex rely upon its continuation. Compulsory acquisition and construction works proposed by the applicant have the potential to affect these in both physical and legal terms [REP-295].

2.5.13 Some of the manufacturing processes and products managed, stored and transported within the Wilton Complex are potentially hazardous to the workforce, local populations and the environment. Facilities within the complex are on the register maintained by the Health and Safety Executive (HSE) under the Control of Major Accident Hazards Regulations 1999 (COMAH). Parts of the complex are also within a secure, access controlled perimeter for these reasons. Parts of the complex are also within a landscaped containment consisting of planted mounds and bunds, providing visual, acoustic and blast screening for nearby land, including residences in the village of Lazenby.

2.5.14 Both Sembcorp and SABIC are concerned to ensure that the internal site infrastructure is not disrupted by the applicant's proposals in ways that lead to economic harm, loss of employment, additional operational safety or environmental concerns for the existing plant within the Wilton Complex.

2.5.15 Due to the disaggregated nature of operations in the Wilton Complex and to the commercially confidential nature of some relevant information, the Panel was not able to obtain aggregate value and employment statistics for the complex as a whole. Due to the strategic significance of facilities such as the SABIC cracker and the location and role of the complex in relation to the national ethylene distribution system (T-PEP), the Wilton Complex is an important and relevant matter which is considered in Chapters 4 and 6 below.

Teesside steel industry

2.5.16 When the minor changes to the application recorded in section 2.2 above were made and advertised, Tata Steel and Sahavirya Steel Industries UK Ltd wrote to the applicant and to the Panel, expressing concerns about the effects of the application as a whole in respect of the following matters:

- access to their plant via the strategic road network, taking project work associated with York Potash (see below) and Dogger Bank Teesside C and D cumulatively into account; and
- possible effects of works to an existing substation at Tod Point on electricity supply to the steel industry.
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- However the Panel notes that these concerns relate to cumulative transportation effects between the York Potash project and Dogger Bank Teesside C and D. They are not a cumulative transportation effect of the York Potash project and Dogger Bank Teesside A and B. They only become relevant and substation works at Tod Point only become necessary if the Dogger Bank Teesside C and D projects proceed to development.

Boulby Mine

2.5.17 The Boulby mine was initially developed by ICI in the late 1960s as a source of potash, polyhalite (a mineral principally used in agricultural fertilizer production) and other associated minerals. Cleveland Potash Limited (CPL) currently operates the Boulby mine from which it extracts minerals from extensive workings deep beneath the seabed including an area within the applicant's offshore cable corridor. The pithead is in the coastal village of Boulby in the Borough of Redcar and Cleveland, between Staithes and Saltburn-by-the-Sea. A rail spur from Saltburn-by-the-Sea provides mineral transport for the mine operation. The mine is a significant local employer and a major UK producer of potash and related minerals.

2.5.18 CPL holds a Crown Estate mineral lease, most recently granted in 2010 and with an unexpired term of 22 years, providing it with the right to mine reserves under the sea bed and to let down the sea bed. Separate Crown Estate leases are held allowing CPL to abstract and discharge seawater. In addition, an Environmental Licence is held allowing CPL to dredge material away from its discharge outfall.

2.5.19 CPL's primary concern as set out in its relevant representation [REP-033] (now withdrawn), related to whether the Dogger Bank Teesside A and B subsea export cable might affect its ability to extract undersea mineral reserves, to abstract sea water at its intake or to return treated discharge to the sea. Non-operational areas of the mine also host the Boulby underground laboratory, a deep underground science facility some 1100m below ground, providing a venue for particle physics, climate science, biological and geological experiments which require a deep underground environment. The possible effect of the

application proposals on the stable and low radiation environment required by this science facility was also a source of concern.

2.5.20 At the Preliminary Meeting, an underground site inspection to the Boulby mine was proposed by CPL in order for the Panel to gain an understanding of the working of the mine. However, negotiations between CPL and the applicant were clearly ongoing, as subsequent to this request, CPL submitted a representation to the examination which stated that they had reached a contractual agreement with the applicant which had resulted in the withdrawal of their relevant representation and objection [REP-194]. They did not submit the terms of the agreement to the examination. However, as a result of this withdrawal, no site inspection was conducted.

2.5.21 Whilst economically and scientifically significant operations clearly are conducted at the Boulby mine site part of which does underlie the proposed order limits at sea. As CPL has been sufficiently satisfied by the applicant to withdraw its relevant representation and to cease participation in the examination, the Panel is satisfied that there is no need for any protective or related provisions to address CPL's existing operations.

York Potash

2.5.22 York Potash Ltd (YPL) is proposing to construct a new potash mine, extracting polyhalite from beneath land near Whitby. The product is proposed to be transported via a dedicated mineral transport system (MTS) to a new materials handling facility and port terminal on Teesside near Redcar. The great extent of the proposed MTS is proposed to be constructed underground in a new tunnel of some 30km in length.

2.5.23 The mine and the MTS are subject of planning applications to the relevant local planning authorities. The new materials handling facility and port terminal on Teesside were notified to the Planning Inspectorate as the subject for an application for a DCO.

2.5.24 The proposed MTS alignment and the HVDC cable alignments proposed in this application would cross each other within the area shown as plots 40A and 40D on the application Onshore Land Plan Sheet 4 [APP-12] (see paragraph 2.2.5 above).

2.5.25 YPL responded to the s56 notice for this application [REP-048], stating that it wished to ensure that the onshore cable works did not impact on their proposal for a subterranean mineral transport system, the power supply, or associated equipment. The Panel suggested in its Rule 6 letter [PD-005] that the applicant should engage with YPL in a SoCG in order to seek agreement on this point.

2.5.26 The applicant submitted a SoCG between themselves and YPL [REP-114] which at section 3.1 sets out matters of specific agreement. This includes the agreed statement that the two projects will not conflict, as the York Potash Tunnel is proposed to be at least 60m below the

surface at the point that the two projects intersect each other, and further that there are no conflicting needs for land for site construction such as compounds. The SoCG records that no matters remain unresolved between York Potash Ltd and the applicant.

2.5.27 This application as originally designed included sufficient land to enable the HVDC transmission cable alignments to cross the proposed MTS at or close to grade by HDD. However, further to the SoCG, this is no longer necessary. Paragraph 2.2.5 above describes of an application change proposal arising from new design information relating to the interests of York Potash Ltd and enabling the applicant to release land that it would otherwise have required to undertake HDD. No further representations have been received from YPL.

2.5.28 The Panel notes that, further to the SoCG between YPL and the applicant, there are no remaining important or relevant effects of the application proposal on the YPL proposals. As YPL has been sufficiently satisfied by the applicant to make a SoCG in such terms, the Panel is satisfied that there is no need for any protective or related provisions to address YPL's proposed developments and operations.

2.5.29 Neither the local planning authority, or DCO applications referred to had been submitted/accepted at the examination close.

3 LEGAL AND POLICY CONTEXT

3.0 INTRODUCTION

3.0.1 This chapter of the report identifies the legal and policy context for the application. It identifies:

- the application documents in which the applicant has identified and discussed legislation and policy;
- examination documents in which information about legislation and policy has been sought and discussed;
- provisions and policies arising from the Planning Act 2008 (as amended) (PA2008);
- provisions and policies arising from European legislation;
- other relevant international obligations
- provisions and policies arising from the Marine and Coastal Access Act 2009 (MACAA2009);
- other relevant UK legislation and policy applicable to the application site and surrounds;
- development plans applicable to the application site and surrounds; and
- policies arising from other plans and strategies relevant to the application site and surrounds.

3.0.2 This chapter records only limited findings in relation to the applicability of law and policy and the extent of submissions on law and policy. All substantive findings arising from the testing of the application proposal or issues arising during the examination in the light of applicable policies take place in subsequent chapters.

3.1 RELEVANT APPLICATION AND EXAMINATION DOCUMENTS

3.1.1 The application is accompanied by an Environmental Statement (ES) which includes Volume 6.3 Chapter 3 Legislation and Policy [APP-068], which largely identifies and frames the legal and policy context for the application in an appropriate manner.

3.1.2 The legal and policy context for Habitats Regulations Assessment (HRA), together with relevant factual material are found in 'Habitats Regulations Assessment Appendix A – Screening Report' [APP-048].

3.1.3 Additional information about the legislative and policy context of the application and its relationship to the need for other consents can also be found in 'Consents and licences under other legislation' [APP-057].

3.1.4 The Panel also sought responses from the applicant and IPs to written questions on 11 August 2014 [PD-023], which sought the identification of responses to the application proposal arising from:

- National Policy Statements (NPS);
- the National Planning Policy Framework (NPPF);

- marine policies and plans, and other regional and city based plans and policies; and
- statutory development plans.

3.2 PLANNING ACT 2008 REQUIREMENTS

3.2.1 The application proposal relates to renewable energy infrastructure for which designated NPSs apply. PA2008 s104(2) applies to such applications. When deciding an application in such cases, the SoS must have regard to:

- The designated NPSs;
- The Marine Policy Statement (MPS);
- any local impact report submitted to the SoS before the specified deadline;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the SoS's decision.

3.2.2 PA2008 s104(3) then makes clear that the SoS must decide the application in accordance with any relevant NPS (except to the extent that one or more of subsections (4) to (8) applies).

National Policy Statements (NPS)

3.2.3 In relation to PA2008 s104(a), the following designated NPSs are relevant to the application considered in this report:

- **NPS EN-1 'Overarching National Policy Statement for Energy'** (July 2011); This NPS sets out national policy for energy infrastructure, including the role of offshore wind which is expected to provide the largest single contribution towards the 2020 renewable energy targets. Part 4 of EN-1 makes clear that the assessment of applications for energy NSIPs 'should start with a presumption in favour of granting consent' and sets out the assessment principles to be applied.
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- **NPS EN-3 'National Policy Statement for Renewable Energy Infrastructure'** (July 2011). This NPS sets out additional policy specific to renewable energy applications, including proposed offshore wind farms with a generating capacity exceeding 100MW. Section 2.6 of EN-3 sets out detailed assessment principles for offshore wind proposals.
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- **NPS EN-5 'National Policy Statement for Electricity Network Infrastructure'** (July 2011). This NPS (paragraph 1.8.1 and 1.8.2) sets out policy relevant to electricity transmission (400Kv and 275Kv) and distribution systems from transmission systems to the end user (130Kv to 230Kv). It also covers substations and converter stations. The NPS is therefore relevant to this application insofar as it applies to subsea

interconnecting cables, subsea export cables, onshore undergrounded cables and offshore substations.

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3.2.4 The Panel has had regard to these NPSs throughout the examination. Specific relevant NPS policy requirements are identified and discussed throughout the remainder of this report.

Marine Policy Statement (MPS)

3.2.5 In relation to PA2008 s104(aa), the appropriate marine policy document is the Marine Policy Statement (MPS) which was prepared and adopted for the purposes of s44 of the MACAA2009 and was published on 18 March 2011. The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment.

3.2.6 The Panel has had regard to the MPS throughout the examination.

Local Impact Report (LIR)

3.2.7 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit Local Impact Reports. Attention was drawn to the opportunity to submit Local Impact Reports (LIRs) at the Preliminary Meeting. The procedural decision and timetable issued after the Preliminary Meeting included an invitation to submit LIRs [PD-005].

3.2.8 The Redcar and Cleveland Borough Council LIR [REP-073] has been submitted to which the SoS must have regard pursuant to PA2008 s104(b). Redcar and Cleveland Borough Council (the Council) is a unitary authority, within which the landfall and all onshore works are proposed to be located. The Council raised no objection to the application proposal in its LIR, which set out a full analysis of the proposal against development plan policy (in section 7.0) and reached the following conclusions.

- In respect of local planning policy, the principle of the proposed use and development onshore was acceptable (paragraph 9.5).
- Landscape and visual impacts were considered to have been appropriately assessed and were acceptable with the mitigation proposed in the DCO (additional physical bunding near Lazenby) (paragraph 9.9).
- No natural environment concerns were raised (paragraph 9.17).
- The need for a Construction Traffic Management Plan and Construction Travel Plan (provided for in the DCO) were noted (paragraph 9.22).
- Impacts on residential amenity arising from construction and operation were considered to have been minimised and appropriate mitigation provided for in the DCO (paragraph 9.27).
- No flood risk concerns were raised (paragraphs 9.28 - 31).
- The scope for the application proposal to deliver substantial benefit to the borough was noted and commitments were made to the Council providing support through its Business Growth

Team, to maximise the local opportunities for related manufacturing and employment (paragraphs 9.33 -55).
- The Council recognised and was content with its role in discharging DCO requirements onshore. The DCO was supported as addressing all matters of local impact satisfactorily (paragraph 9.57 - 58).
- The Council raised no objection to the proposed development.

3.2.9 During oral hearings held on 13 November 2014 relating to compulsory acquisition [HR-016], the surveying firm Carter Jonas requested to be heard on behalf of an affected person, the Zetland Estate. In making representations relevant to that affected person, Carter Jonas suggested that they were also instructed by the Council to object to compulsory acquisition of the Council's land and interests in land [REP-373] [HR-030 - 031].

3.2.10 Mr David Pedlow (a planning officer) had attended oral hearings on behalf of the Council up to that point and had not made any reference to the matters raised orally by Carter Jonas. Nor were those matters raised in any other written or relevant representation made by or on behalf of the Council up to that point.

3.2.11 The Panel orally requested Mr Pedlow to seek further instructions from the Council and made the same request of Carter Jonas. No further oral submissions or written representations were provided by the Council in responses to these requests.

3.2.12 The Panel revisited this issue during hearings held on 4 December 2014 [HR-033] and 13 January 2015 [HR-049] relating to compulsory acquisition, to ensure that its understanding was as clear as it could be. Both the Council and Carter Jonas were invited to attend. Notwithstanding these opportunities, the Council's representative did not attend either hearing and so the Panel was unable to put any further oral questions directly to the Council on the standing of its LIR. Carter Jonas did attend on 4 December 2014 and submitted as follows:

'As an Authority Redcar & Cleveland Borough Council do not oppose Dogger Bank A & B and would prefer to reach a negotiated settlement rather than a Compulsory Purchase but are keen to ensure those terms are on acceptable commercial terms that protect the Authorities [sic] assets.' [REP-392]

3.2.13 Carter Jonas did not provide any written confirmation of its oral submissions on 13 January 2015. Reference to the digital recording [HR-057] and to the applicant's written confirmation of oral submissions [REP-466] confirms that the Council had no objections to the compulsory acquisition proposals in principle. It sought reassurance on technical points (addressed in Chapter 6 below) and wished to reiterate its preference to reach a voluntary agreement rather than be subject to the exercise of compulsory acquisition

powers. Nothing was submitted on the Council's behalf that qualified the position set out in its LIR.

3.2.14 It follows that the Panel considers that oral submissions and written representations by Carter Jonas on behalf of the Council were not intended to revise the position set out in the LIR.

3.2.15 The Panel has taken the LIR fully into account in this report.

Other important and relevant matters

3.2.16 Other important and relevant matters are identified as necessary below (in relation to law and policy) and in Chapters 4 and 5 of this report (in relation to proposals and facts).

3.3 EUROPEAN REQUIREMENTS

Environmental Impact Assessment (EIA) Directives (85/337/EEC as amended by 97/11/EC, 2003/35/EC and 2009/31/EC and codified by 2011/92/EU)

3.3.1 The codified directive sets out the framework for the identification and assessment of the potential environmental effects of qualifying development applications as a means to inform and improve decision-making. It also sets out requirements relating to transboundary impacts. The principal function of the directive is to establish the requirement for developers to compile and submit an Environmental Statement (ES) in support of any qualifying development application, presenting their assessment of the likely significant environmental impacts.

3.3.2 The directives are given domestic effect for the purposes of nationally significant infrastructure project assessment by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations). The Panel has considered the effect of the directives and the requirements of the EIA Regulations throughout the examination. The Panel is satisfied that the applicant has submitted an ES that complies with the EIA Regulations.

Renewable Energy Sources (RES) Directive (2009/28/EC)

3.3.3 The Renewable Energy Sources (RES) Directive sets out legally binding targets for Member States with the expectation that by the year 2020, 20% of the European Union’s energy mix and 10% of transport energy will be generated from renewable energy sources. The UK’s contribution to the 2020 target is that by then 15% of energy will be from renewable sources.

3.3.4 The UK Renewable Energy Strategy 2009 (Renewable Energy Strategy) sets out how the UK proposes to meet the targets.

3.3.5 Both are relevant to this application to the extent that it is a proposal to generate renewable energy (electricity). The Panel has considered both.

Habitats Directive (92/43/EEC)

3.3.6 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites (European Sites) and a strict system of species protection. The application proposal affects European Site and protected species under the directive - identified and discussed in Chapters 4 and 5 below.

3.3.7 The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) are the principal means by which the Habitats Directive is transposed into domestic law in England and Wales. They apply in the terrestrial environment and in territorial waters out to 12 nautical miles (nm).

3.3.8 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012. These Regulations amend the Habitats Regulations. They place duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.

3.3.9 The Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007 (as amended) (the 2007 Offshore Regulations) and the Offshore Marine Conservation (Natural Habitats etc.) (Amendment) Regulations 2012 provide the equivalent transposition of the Habitats Directive to the UK's offshore marine area which covers waters beyond 12 nm, within British Fishery Limits and the seabed within the UK Continental Shelf Designated Area.

3.3.10 Together, these regulations provide the UK legal framework for Habitats Regulations Assessment (HRA).

3.3.11 A Report on the Implications for European Sites (RIES) was produced by the Planning Inspectorate secretariat and issued on 19 December 2014 [PD-046]. A RIES compiles, records and signposts information about the potential effects of the proposed development. It draws together information provided within the application and information submitted throughout the application, up to and including timetable Deadline VII (11 December 2014). All IPs were given the opportunity to comment at Deadline VIII of 19 January 2015.

3.3.12 This process is reported on in detail in Chapters 4 and 5 below.

Birds Directive (2009/147/EC)

3.3.13 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

3.3.14 The 'Terrestrial Ecology' chapter of the ES [APP-140] states that the Teesmouth and Cleveland Coast SPA falls within the 5km study area. The applicant does not anticipate any impacts on this SPA as it does not fall within the cable route or converter stations corridor.

3.3.15 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.

3.3.16 The application proposal affects birds subject to the directive, as identified in Chapters 4 and 5 below.

Marine Strategy Framework Directive (MSFD) (2008/56/EC)

3.3.17 The Marine Strategy Framework Directive12 (MSFD) aims to achieve the Good Environmental Status (GES) of the EU's marine waters by 2020 and to protect the resource base upon which marine-related economic and social activities depend. It is the first EU directive related to the protection of marine biodiversity, and sets an objective that "biodiversity is maintained by 2020", as the cornerstone for achieving GES. It is delivered through four European marine regions of which the North East Atlantic is relevant to the application site. Members States in each marine region cooperate through a Regional Sea Convention.

3.3.18 The Marine Strategy Regulations 2010 transpose the MSFD into domestic law in England and Wales. The system is in the process of establishment and requires:

- an assessment of the current state of UK seas (by July 2012 - and delivered though the UK Marine Strategy Part 1);

[12] Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy

- a set of detailed characteristics of what GES means for UK waters with associated targets and indicators, (by July 2012 and delivered though the UK Marine Strategy Part 1);
- a monitoring programme to measure progress (by July 2014, the subject of an on-going consultation); and
- a programme of measures for achieving good environmental status by 2016 (to be the subject of consultation in spring 2015)

3.3.19 The UK Marine Strategy Part 1 is relevant to this application and the Panel has had regard to it alongside the MFSD and the Marine Strategy Regulations. The Panel finds that the application proposal is in broad conformity with the directive and the strategy.

3.4 OTHER INTERNATIONAL OBLIGATIONS

UNEP Convention on Biological Diversity (CBD) 1992

3.4.1 The United Nations Environment Programme (UNEP) Convention on Biological Diversity (CBD) emerged from the Earth Summit in Rio de Janeiro in 1992. It came into force on 29 December 1993. The UK is a contracting party. It has 3 main objectives:

- the conservation of biological diversity;
- the sustainable use of the components of biological diversity; and
- the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

3.4.2 Article 14 requires the use of the EIA process as a means to identify, minimise or eliminate the significant adverse environmental effects of development, including that of the application site.

3.4.3 The Infrastructure Planning (Decisions) Regulations 2010 (Regulation 7) provide it with domestic effect for the purposes of nationally significant infrastructure development assessment. The Panel has considered the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation.

3.5 TRANSBOUNDARTY EFFECTS

3.5.1 An initial transboundary screening was undertaken by the Planning Inspectorate under delegation for the SoS. The screening sought to identify whether or not there was potential for likely significant effects on other Member States of the European Economic Area (EEA) as a result of a given project. A Transboundary Screening Matrix was published on 30 July 2012 [PD-028].

3.5.2 Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore considered necessary. The Planning Inspectorate, on behalf of the SoS, determined that the following EEA States should be notified about the proposals: Belgium, Denmark, France, Netherlands, Germany, Norway and Sweden.

3.5.3 On 7 August 2012, in accordance with Regulation 24(2)(b) of the EIA Regulations, a notice was placed in the London Gazette [PD-043] and letters were sent to the relevant bodies in the States listed above. Following notification, Sweden [PD-029], Netherlands [PD-030] and Germany [PD-031] stated that they wished to participate in the Regulation 24 process. No response was received from the other four EEA States.

3.5.4 Following acceptance of the application, the project was re-screened by the Planning Inspectorate, on behalf of the SoS, on 23 April 2014 [PD-028]. This process identified likely significant effects on the environment in the same seven EEA States as the original screening and all seven were again consulted at that time. On that occasion Germany [PD-044] and Norway [PD-045] indicated an intention to participate in the process and there was no reply from the other five States.

3.5.5 On 17 July 2014 all seven States were sent a letter under Rule 6 of The Infrastructure Planning (Examination Procedure) Rules 2010 and invited to attend the Preliminary Meeting [PD-006-016]. None attended and no further communication was received from these States. Chapter 4.7 below draws conclusions in respect of the consequences of this.

3.6 MARINE AND COASTAL ACCESS ACT

3.6.1 The Marine and Coastal Access Act 2009 (MACAA2009) provides the legislative basis for:

- the development and application of policy to the UK marine environment; and
- the management of development in the UK marine environment - through marine licences.
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The MACAA2009, provisions and policy stemming from it are relevant to this application where development is proposed in the marine environment.

Marine Licences

3.6.2 Under s149A an order granting development consent may include provision deeming a marine licence under the Marine and Coastal Access Act 2009.

3.6.3 All versions of the draft DCO included four marine licences as follows:

- Marine Licence 1: Project A Offshore (Generation)
- Marine Licence 2: Project B Offshore (Generation)
- Marine Licence 3: Project A Offshore (Transmission)
- Marine Licence 4: Project B Offshore (Transmission)

3.6.4 The recommended version of the DCO includes all changes to the DML structure since the draft DCO version submitted with the application.

3.6.5 The changes can be followed in the draft DCOs in the examination document library: Version 1 [APP-028]; Version 2 [REP-137]; Version 3 [REP-214]; Version 4 [REP-251]; Version 5 [REP-374]; Version 6 [REP-426], version 7 [REP-499] and final drafting amendments [REP-546] and [REP-547].

UK Marine Policy Statement

3.6.6 The UK Marine Policy Statement (MPS) was prepared and adopted under MACAA2009 s44. It was published on 18 March 2011 by all of the UK administrations.

3.6.7 The MPS provides the policy framework for preparing Marine Plans under MACAA2009 and for taking decisions affecting the marine environment - including marine licence decisions. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks.[13]

3.6.8 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored, amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.

3.6.9 The MPS has provided the overarching policy context for consideration of the application offshore works and the Deemed Marine Licences (DMLs).

Marine Plans

3.6.10 The MACAA2009 and the MPS envisage marine licence decision making taking place within an area-based spatial policy framework provided in Marine Plans. The application site falls within the East Inshore and East Offshore Marine Plan Areas.

3.6.11 The East Inshore and East Offshore areas were the first areas in England to be selected for the production of marine plans. The plans were adopted and published on 2 April 2014. The East Inshore area includes a coastline that stretches from Flamborough Head to

[13] see Marine and Coastal Access Act 2009 s.42(3) and (4)

Felixstowe. The East Offshore area encompasses the marine area from 12 nautical miles out to the maritime borders with the Netherlands, Belgium and France.

3.6.12 At Paragraph 2.3.10 of the applicant's Planning and Design Statement [APP-061] it states that the Dogger Bank Teesside A and B wind farm arrays both lie within the East Offshore Plan area. The export cables lie within the East Inshore Plan area. This was not disputed by the MMO during the examination and is therefore agreed.

3.7 OTHER LEGAL AND POLICY PROVISION

The National Planning Policy Framework (NPPF) and Planning Practice Guidance (NPPG)

3.7.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. The introduction to the NPPF[14] makes clear that it '…does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework).'

3.7.2 The Panel has considered NPPF policy applicable to:

- industrial land;
- employment;
- environmental management / hazards; and
- agricultural land.

3.7.3 NPS EN-1 at paragraph 4.1.7 identifies that the Infrastructure Planning Commission (IPC) (and hence the SoS) should have regard to advice in Circular 11/95 'The Use of Conditions in Planning Permissions' or any successor to it when considering the imposition of requirements in DCOs. Paragraph 5.11.11 provides the same advice in respect of requirements to secure mitigation. On 6 March 2014, a wide range of guidance in planning circulars (including the main body of Circular 11/95) was cancelled and on-going guidance was consolidated into the online Planning Practice Guidance prepared under the NPPF (referred to in this report as NPPG). It follows that the Panel has had specific regard to NPPF paragraphs 203 - 206 and to NPPG guidance on the use of planning conditions under ID:21a in order to discharge the policy arising from NPS paragraphs 4.1.7 and 5.11.11.

[14] NPPF Introduction - Paragraph 3

3.7.4 As the Panel has recorded elsewhere in this report, it has provided the applicant and IPs with an opportunity to draw any issues arising from the NPPF to its attention in their answers to written questions. The Panel asked questions on the NPPF and NPPG in questions 1.9, 1.10, 1.14, and 1.16 of their first written questions [PD-023]. No such issues were specifically identified. The four areas identified above were considered as providing the context for the consideration of the LIR, local policies and matters raised within it.

Natural Environment and Rural Communities Act 2006

3.7.5 The Natural Environment and Rural Communities Act (NERCA2006) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the conservation of biodiversity. In complying with this, regard must be given to the UNEP Convention on Biological Diversity of 1992.

3.7.6 This duty is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development. When deciding an application for development consent the SoS must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 (through Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010). Its consideration has been integrated into the consideration of the issues arising from the application in Chapter 4 below and into the consideration of matters relevant to Habitat Regulations Assessment (HRA) in Chapter 5.

The Town & Country Planning Act 1990 (as amended), The Planning & Compulsory Purchase Act 2004 and Development Plans

3.7.7 The application site includes land within the Borough of Redcar and Cleveland and is within close proximity to the northern and eastern boundaries of the North York Moors National Park.

3.7.8 The Panel is conscious of paragraph 4.1.5 of NPS EN-1 which provides that NPS policy takes precedence over development plan policy in any instance of conflict. It has nevertheless had regard to the following local plans (together with relevant NPPF content) for localities subject to direct and indirect effects and within the vicinity of the application site:

- Redcar and Cleveland Borough Council Local Development Framework (LDF) 2007[15]; and

[15] The Redcar & Cleveland Publication Local Plan was considered by Borough Council on the 31st July 2014 with a view to replacing the LDF, but was not approved. The Council is now considering its options and will set out a new timetable for preparing the Local Plan in due course.

- North York Moors National Park Authority Local Development Framework (NPLDF) 2008[16].

3.7.9 The LDF contains planning policy for Redcar and Cleveland, including the Wilton Complex, but excluding land within the North York Moors National Park. It comprises the Core Strategy Development Plan Document (DPD), the Development Policies DPD and various other DPDs. The Borough Council drew attention to the policies relevant to the proposal in their LIR and the policies identified in paragraph 7.0 of the LIR have been considered by the Panel.

3.7.10 This NPLDF comprises Core Policies and Development Policies that form the Development Plan for the National Park and again policies have been considered to the extent that they are relevant.

Other policy sources

3.7.11 The Panel has also had regard to the following relevant policy sources:

- The Energy White Paper: Meeting the Challenge (May 2007) ;
- The UK Low Carbon Transition Plan, National Strategy for Climate and Energy (July 2009);
- The UK Renewable Energy Strategy (July 2009); and
- Planning Our Electric Future: a White Paper for secure, affordable and low carbon electricity (July 2011).
- The Tees Valley Unlimited (TVU) Tees Valley Strategic Economic Plan (May 2014).

[16] The policies in the North York Moors Local Development Framework replace the saved policies in the North York Moors Local Plan (2003).

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.0 INTRODUCTION

4.0.1 This chapter of the report identifies the key issues arising from the application and the action taken during the examination to address these.

4.1 INITIAL ASSESSMENT OF PRINCIPAL ISSUES

4.1.1 At the outset of the examination process, the Panel made an initial assessment of the principal issues arising from its consideration of the application documents and relevant representations. These issues are recorded below in summary form and in alphabetic order. They in turn were included in the Rule 6 letter, the Panel's initial correspondence with the applicant, IPs and invited persons [PD-005].

- Biodiversity, Ecology and Natural Environment;
- Compulsory Acquisition;
- Construction;
- Draft Development Consent Order (DCO);
- Debris, Waste and Contamination;
- Electric and Magnetic Fields (EMFs);
- Historic Environment;
- Marine and Coastal Physical Processes;
- Navigation – Air and Marine;
- Noise;
- Other Projects and Proposals;
- Socio-Economic Effects;
- Townscape, Landscape and Visual; and
- Transportation and Traffic.

4.2 ISSUES FRAMEWORK IN THIS CHAPTER

4.2.1 Of the issues described in section 4.1 above, matters relating to the Habitat Regulations Assessment (HRA) consequences of the application proposal for biodiversity, ecology and the natural environment are considered in Chapter 5, matters relating to compulsory acquisition are considered in Chapter 6 and matters relating to the draft DCO are considered in Chapter 7.

4.2.2 All other important and relevant issues that emerged during the examination are analysed within the issues framework contained in this chapter. However, the Panel has changed the order in which they are addressed from the order above, to an order more closely related to factors including their scale, their timing in the project delivery process and their significance to the recommendation as a whole. This chapter addresses these groups of issues in the following order:

- the relationship of the proposed development to land uses projects and proposals, the location in which the most significant

set of issues raised in this examination are set out, those relating to the Wilton Complex;

- the relationship of the proposed development to sea uses, the inshore and offshore fishing industries;
- the achievement of grid connections;
- whether the proposal represents good design;
- effects on biodiversity, ecology and the natural environment;
- construction, operation and decommissioning effects at sea;
- construction, operation and decommissioning effects on land;
- social and economic effects at sea;
- social and economic effects on land;
- historic environment effects; and
- seascape, landscape and visual effects.

In the light of all of these considerations, the Panel applies a planning balance at the end of this chapter and the need for and approach taken to the proposed development.

4.2.3 It should be made clear that in relation to the first two of these subject matters, the Panel had a substantial volume of submissions to consider. They also give rise to considerations of substantial weight in the minds of the Panel, although a substantial element of those considerations arose from matters that are reported here in relation to CA in chapter 6 below.

4.2.4 In relation to the remaining issues, these include legally and technically important matters such as biodiversity, ecology and the natural environment, where the Panel must seek the advice of the SNCBs and also received submissions from other natural environment interests.

4.2.5 The also include a range of subject matters where the role of the Panel has been essentially inquisitorial because few or no relevant or important matters were raised in submissions, but the Panel nevertheless needed to satisfy itself that the application proposal as a whole was sound and that NPS policy was complied with. However, where there was limited or no contention and few or no residual matters of relevance and importance, the Panel takes a briefer approach to reporting but has considered all the evidence which is covered in the Examination Library.

4.3 INDUSTRY AND AGRICULTURE

4.3.1 This part of the report considers the relationship between the application proposal and the main onshore land-uses onshore, in respect of which most representations proceeded from those most active IPs who made substantial written representations and / or requested to be heard orally.

- The petrochemical industry and the Wilton Complex.
- Agriculture.

Other concerns emerged from the steel industry and from extractive industry (potash mining). However, as is detailed in Chapter 2 which provides a description of the land use context of the application proposal, steel industry and potash industry submissions related to matters that were either negotiated to a point of settlement between the applicant and the relevant parties, or they were on balance of insufficient importance or relevance to bear on the SoS's decision.

The Wilton Complex

4.3.2 The buried onshore cable route passes through the Wilton International, formerly Imperial Chemical Industries (ICI) Wilton, which is also the location where the converter stations would be located.

4.3.3 Wilton International is a major industrial complex hosting a variety of industries:

- most of which are broadly in the related sectors of hydrocarbons, petrochemicals and energy generation;
- many of which are physically integrated, even though they are in separate ownerships, meaning that raw materials, products and by-products pass from one to another along pipes and ducts;
- which contains a significant research, development and office use; and
- which is divided between large, complex and hazardous plant that is within a secured perimeter, less sensitive uses including grain and biomass storage and significant areas of open or undeveloped land.

It is described in chapter 26 of the Environmental Statement as 'an industrial area managed by Sembcorp Utilities (UK) Limited. It encompasses a large area of chemical industry related buildings and equipment. It is a privately owned site and has an internal network of roads, buried and gantry infrastructure [REP-143], which is also described in Chapter 2 above.

4.3.4 This landholding and integrated plant is coordinated by Sembcorp, as freeholder and specialist utility provider to the industries on the site.

4.3.5 The Panel describes the landholding of Sembcorp as the Wilton Land - including undeveloped land and as the Wilton Complex, where the predominant land use is for heavy industry.

4.3.6 Sembcorp is 'currently marketing available … sites, earmarked for potential development, within the Wilton Complex.' and that there is 'a large number of utilities of all types identified within the site that provide services to the various industrial units … the number crossed by the cable route is approximately 52.'[REP-143].

4.3.7 Those interested party or affected person industry bodies which the Panel considers to be significant in respect of this application are:

- Sembcorp Utilities (UK) Ltd (Sembcorp);
- SABIC UK Petrochemicals Limited (SABIC); and
- GrainCo.

4.3.8 There is no explicit policy guidance in the National Policy Statements in respect of the impact of offshore wind farms on major onshore industrial operations such as the Wilton Complex. However, paragraph 4.1.3 of the Overarching National Policy Statement for Energy (EN-1) states that 'In considering any proposed development, and in particular when weighing its adverse impacts against its benefits …' the Panel 'should take into account its potential benefits … and its potential adverse impacts'.

4.3.9 Paragraph 4.1.4 of the Overarching National Policy Statement for Energy (EN-1) states that 'social and economic benefits and adverse impacts' should be taken into account 'at national, regional and local levels'.

4.3.10 Also, in paragraph 2.5.32 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) it states that 'The impacts identified in Part 5 of EN-1 and this NPS are not intended to be exhaustive …' and that the Panel … 'should therefore consider any impacts which it determines are relevant and important to its decision.'

Sembcorp

4.3.11 In its relevant representation [REP-071], Sembcorp states that it 'is a major industrial energy and integrated utilities service provider to the process industry in the Tees Valley (which is, in turn, the largest integrated chemical complex in the UK in terms of manufacturing capacity and the second largest in Western Europe).'

4.3.12 Sembcorp 'owns approximately 667 hectares of land at Wilton International; of which approximately 170 hectares is heavy and light industrial development plots. Since 2003, Sembcorp has invested over £200 million developing new assets and improving its existing facilities '… with a view to securing inward investment and further industrial customers.' [REP-071].

4.3.13 Sembcorp expressed itself as 'generally in favour of the project.' and 'recognises a number of benefits which the project will bring' [REP-071]. It is part of its diversification plan for the Wilton Complex that it contains energy generation and related uses. Historically the site hosted a coal fired and combined cycle gas generating facilities (the latter in the process of decommissioning, providing power to the energy intensive industrial uses present on the site. In more recent times, new development has included biomass and energy from waste generation. Some wind turbines have been constructed and there are proposals for more, contributing towards carbon emissions reduction for a heavy energy consuming site. The applicant's converter stations form a contribution to that diversification. They would also be very

appropriately sited, within an existing industrial area, largely screened from nearby residents by existing landscaped, acoustic and blast bunding.

4.3.14 Sembcorp also stated [REP-071] that '... Wilton International is a hub of petrochemical, speciality and other process manufacturing businesses and these businesses are vital contributors not only to the regional, but also the national economy'. It raised the following operational concerns:

- cable route width and alignment sterilising high value development plots;
- an error in the route at the GrainCo grain storage and processing site;
- construction and operational impacts on Wilton business operations and development;
- being 'blamed' for noise impacts from the converter stations; and
- EMF and heat from buried cables.

4.3.15 These concerns form the basis of a SoCG with the applicant [REP-120] and are discussed below.

4.3.16 Sembcorp identified a cable route issue in its (late) response to ExQ1 question 3.3 [REP-129], specifically referring to the HDD entry point at the eastern end of the site adjacent to the A174 roundabout access as 'in the largest remaining consented development plot ... and the cable alignment ... is such that there is a significant reduction in the land area for future development ...' but, following the second Issue Specific hearing and further discussions with the applicant, this representation was withdrawn [REP-314].

4.3.17 In paragraph 4.1 of the SoCG [REP-120], the error in respect of the GrainCo facility was acknowledged by the applicant: 'and, 'subject to an agreement upon the remainder of the route '[i]t was not Forewind's intention to affect Grainco. It was always envisaged ... that the route ... would remain on Sembcorp's freehold land.lignment through Wilton International, it ... is willing to enter into legal agreements for ... a route which runs to the south of the Grainco site.' In its (late) submission for Deadline IV [REP-233], Sembcorp reported that 'agreement in principle has been reached that the cable route should be realigned' (plans PA 2526-LP-05 and -06 refer).

4.3.18 Referring to the regional and national importance of businesses within the Wilton complex in respect of construction impacts on Wilton business operations, Sembcorp states that 'accordingly any development ... must ... not materially disrupt those existing residents ...' and expresses itself as 'understandably keen to ensure that the works are undertaken ... so as not to affect existing operations'. Explicit reference is made to 'chemical and manufacturing processes' and, in respect of traffic, that this 'does not block or restrict access' [REP-071].

4.3.19 In respect of noise impacts from the proposed converter stations, Sembcorp 'is keen to ensure that the noise of the converter stations, any other parts of the onshore development … during construction, maintenance or decommissioning does not … restrict existing operations … nor prevent the development of future projects' [REP-071], and responded to ExQ1 question 10.8 to say that 'ambient noise levels … fallen significantly in the past few years …' [REP-129]. Although its response to the Panel's Rule 17 question [R17-27] was not unequivocal, it appears that the basis for a common approach has been agreed and consequently there is nothing to suggest that this is now an issue which the Panel needs to consider further [REP-540].

4.3.20 Sembcorp is 'keen to ensure that neither the cables nor the converter stations generate EMF s and/or heat which could adversely affect existing operations … and/or prevent or limit the type of project that could be attracted to the adjacent development plots' [REP-071].

4.3.21 The Panel undertook an accompanied site visit to the Wilton complex on the afternoon of 15 October 2014 in order to obtain an overview of operations on the site and in particular to view:

- the HDD entry point at the eastern end of the site;
- the passage of the proposed cable alignments within the Wilton Complex; and
- the proposed change to the cable alignment to avoid the GrainCo facility.

4.3.22 The consequent proposed change to the order limits to avoid the GrainCo site, and hence the need for a change to the application, was heard on day 3 of the first issue-specific hearing on 16 October 2014 and is discussed further below. The need for a change to the area of land subject to compulsory acquisition is dealt with in chapter 6 of this report.

SABIC

4.3.23 SABIC UK Petrochemicals Limited (SABIC) (an affected person and a tenant of Sembcorp) is not explicitly described in the Environmental Statement and made no representation until the examination was well under way on 5 November 2014 [REP-295]. At that point its representation focused primarily on the impact and potential impact of the proposal on its business, without much detail of what type or size that business is or its regional and national importance.

4.3.24 SABIC is a subsidiary of SABIC Europe bv. It's parent company SABIC (Saudi Basic Industries Corporation) is one of the world's leading manufacturers of chemicals, fertilisers, plastics and metals.

4.3.25 SABIC is a major regional industry, effectively continuing the ICI legacy by producing and selling specialist chemical products, and 'owns and operates facilities on and around the Wilton International site …. including

- The Olefins 6 facility (known as the Cracker)
- The Trans-Pennine Ethylene Pipeline (known as the TPEP)
- Three brine pipes which broadly follow the route of the TPEP
- a drain associated with the brine pipes and which would manage accidental spillage [REP-295].

4.3.26 Explaining SABIC's (late) submission for Deadline III dated 5 November 2014[REP-295], Bond Dickinson states that 'SABIC has been in discussions (with the applicant) … for some time … however these discussions have centred around technical issues relating to the crossing point of Works 6A and 6B and the TPEP and Brine Mains. There have not been any discussions in relation to legal issues arising out of the proposed Development Consent Order. As a result, SABIC have come to realise relatively late in the day that they need to make representations to …. ensure that they are able to continue to operate from the Wilton Site.'

4.3.27 Although much of the cable would be buried in conventional trench, HDD would be used at certain key locations 'including the Trans Pennine Ethylene Pipeline …' [REP-071]. SABIC's concerns [REP-295] nevertheless relate to operational issues in respect of:

- access to the Cracker, both day-to-day and in respect of 'the multi-million pound improvement and upgrade to SABIC's Olefins 6 plant …' [REP-071], due to take place in 2016 and for which plans are at an advanced stage;
- potential severance of its Trans-Pennine Ethylene Pipeline (TPEP), which 'is used to transport ethylene … to Ineos' Castner-Keller facility at Runcorn';
- potential severance of the Brine Pipes, which 'would effectively shut down operations at Wilton. The brine … is highly concentrated and would kill any vegetation it came into contact with …';
- any adverse effects on the Drain, 'a very important safety feature relating to the Reservoirs'.

4.3.28 Further information pertaining to the Cracker site including abnormal indivisible load (AIL) access arrangements was provided by SABIC following the second Issue-Specific Hearing [REP-313].

GrainCo Ltd

4.3.29 GrainCo Ltd (GrainCo) owns and operates a grain storage and processing facility which is an integral part of the Wilton Complex and its linked operations [REP-071]. Grain is used as feedstock for bioethanol. The cable alignment as originally submitted ran through the GrainCo land, but this was resolved during the examination and is no longer a concern (See Chapter 2 and Chapter 6).

Economic weight

4.3.30 The Panel enquired into the potential impacts of the development affecting the Wilton operators and the following evidence was presented in response;

4.3.31 Sembcorp [REP-540, Appendix C] provided evidence of the effects of impacts affecting the Wilton Complex (all operators interests):

- The Wilton Complex is a significant contributor to the estimated £10 billion of annual sales generated by the process industry in the Tees Valley.
- Of the order of 2,000 people work at Wilton.
- Dealing solely with the cost of disruption to Sembcorps own assets, costs of £400-500,000 per day could be incurred.

4.3.32 SABIC [REP-541] provided evidence of the effects of shutting down its Cracker plant:

- Margin £500k per day 2014/15 prices or £1,000,000 at 2017 prices;
- Shutdown costs typically 10 days £5M;
- Fixed costs of operation £100M p.a.; and
- Employment headcount 300 (2014/15); 450 (2017).

4.3.33 The applicant [REP-539] provided the following evidence of equivalence in terms of the economic weight of its activities:

- the largest single contribution towards the 2020 renewable energy generation targets;
- 8,410GWh (gigawatt hours), enough to power approximately 1.8 million homes;
- Construction - 1,092 and 1,644 full time equivalent (FTE) direct employment and 588 to 984 indirect employment;
- Operation - 216 and 300 FTE direct employment and 180 to 216 indirect employment;
- indicative single project capital expenditure of £3.6billon (£7.2 billion application total);
- has estimated the costs of a single operational cable repair offshore, due to lost revenue and works costs, would be in the region of £112m to £175m; and
- wind farm revenue would typically be expected to be on average around £1.5m per day.

Effects on agriculture

4.3.34 The cable alignment passes across agricultural land from the landfall to the Wilton Complex and as it leaves Wilton onwards to the NGET substation. Representations were received from affected persons as detailed in Chapter 6 on the basis that they were all provided within the context of concerns about compulsory acquisition.

4.3.35 Potential effects on land were raised including, issue of sterilisation of the land above the cable [REP-290], drainage and cropping [REP-308], access, noise, security and vibration during construction [REP-378], the effects on field drainage [REP-393-397].

4.3.36 In terms of access, security, noise, vibration and drainage the DCO requirement 26 and the Code of Construction Practice (CoCP) makes provision for mitigation, cascading down to requirements 27 and the Construction Environmental Management Plan (CEMP), providing for construction method statements, drainage method statements, and the construction, noise and vibration management plan [REP-494]. Land sterilisation and cropping are dealt with compensation matters in CA.

4.3.37 Conclusions

4.3.38 In respect of the Wilton Complex including the land interests of Sembcorp and SABIC there were potential residual effects of major significance. The major concern remaining at the end of the examination was that the applicant's works would be implemented in a way that would leave Wilton operators exposed to events or disruption that could have the effect of harming the safe operation of plant, damaging infrastructure, adversely affecting the ability of plant operators to deliver planned maintenance or planned upgrades.

4.3.39 The applicant made clear that it would not wish to harm the operation of any Wilton plant or give rise to any adverse effects. However, in the absence of clear protective provisions, Sembcorp and SABIC remained unclear that the applicant would protect their interests. The difficulty faced by Sembcorp and SABIC was that the applicant's draft protective provisions essentially left judgements about the operational effects of complex petrochemical plant in the hands of the applicant.

4.3.40 Having heard both the applicant and the Wilton Parties on this point, the Panel formed the view that the applicant's/undertakers works and the Wilton operations were essentially of equal weight. A further consideration was that, because of the applicant's proposed transfer of benefits provisions (which the Panel considers more broadly to be necessary to enable the commercial development of the application proposal) the applicant will not necessarily be the undertaker and so cannot make direct agreements or undertakings. Measures to ensure that that the Wilton Parties operations are adequately protected have to set within the DCO.

4.3.41 The implications of this were that the management of protective provisions should not in the Panel's view rest in the hands of the undertakers alone. There should in the Panel's view be broad equity between the undertakers and the Wilton Parties, and the Wilton Parties' expertise in relation to their own operations should be used to manage down potential conflict between them and the undertakers. This reasoning is taken further in respect of the proposed protective

provisions in the Panel's consideration of CA and of the DCO provisions in Chapters 6 and 7 below.

4.3.42 In terms of agriculture, taking these remaining issues into account, the Panel concludes that the public benefits of the project significantly outweigh its effects given mitigation secured through DCO requirements 26 and 27, the CoCP, the CEMP and related plans.

4.4 FISHING

4.4.1 The effects of the application on sea use for fisheries were issues that again resulted in significant engagement between the Panel and IPs.

4.4.2 Matters relating to offshore social and economic impacts on commercial fisheries are covered by the applicant in chapter 15 of the Environmental Statement [APP-119].

4.4.3 These matters were examined both through written questions and on the second day of the second issue-specific hearing on 12 November 2014. Additional time was also made available on the first day of the third issue-specific hearing on 2 December 2014.

4.4.4 Matters relating to effects on fish species and the status of fishing (as a plan or project) were also examined through written questions and were heard at the first issue-specific hearing in October 2014: these matters are covered in chapter 5.

4.4.5 The area of the Dogger Bank in which the application proposal is situated is a location where major offshore commercial fishing takes place. There is also day fishing activity in inshore waters in the area traversed by the proposed export cable.

4.4.6 The applicant has agreed Statements of Common Ground with no issues unresolved with the following organisations:

- German Fishermen's Association [REP-075];
- Swedish Fishermen's Federation [REP-084];
- Rederscentrale (Belgian fishermen and shipowners) [REP-093];
- Norwegian Fishermen's Association and Fiskebat [REP-094];
- Redcar and Teesbay Fishermen's Association [REP-103];
- Comite Regional des Peches Maritimes et des Elevages Marins (Nord Pas-de-Calais Picardie) [REP-107];
- North Eastern Inshore Fisheries and Conservation Authority (NEIFCA) [REP-122]

4.4.7 Residual issues relating to effects on fisheries are then divided into:

- Offshore fishing issues (involving the NFFO and VisNed); and
- Inshore fishing issues (involving EPIC Regeneration for Hartlepool Fishermen's Society Ltd (HFS).

Offshore fishing issues

4.4.8 Paragraph 2.6.133 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) requires that …*'the applicant has sought to design the proposal having consulted representatives of the fishing industry with the intention of minimising the loss of fishing opportunity…'* thus allowing the two industries to co-exist successfully.

4.4.9 Paragraph 2.6.134 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) goes on to say that *'Any mitigation proposals should result from the applicant having detailed consultation with relevant representatives of the fishing industry.'*

4.4.10 Referring to the impact of construction and operation, paragraph 2.6.136 says that the Panel …*'will need to consider the extent to which disruption to the fishing industry … has been mitigated where reasonably possible'.*

4.4.11 In its relevant representation [REP-024], the National Federation of Fishermen's Organisations (NFFO) collaborating with VisNed stated that it is *'… the representative body for fishermen in England, Wales and Northern Ireland. All sizes and classes of fishing vessel are represented. The NFFO also represents British vessels owned and operated by Dutch interests (Anglo-Dutch)…'*

4.4.12 NFFO and VisNed expressed concerns in respect of

- how well fishing will resume after construction;
- adequacy of the EIA in assessing impacts, especially at an individual scale;
- mitigation measures which allow co-existence;
- turbine/infrastructure and inter-array cable layout;
- inter-array and cable export burial; and
- residual seabed fishing hazards

4.4.13 The NFFO also said in its relevant representation [REP-024] that it was looking for the following issues to be addressed:

- loss of earnings;
- long term loss of fishing grounds;
- temporary relocation of static fishing gear;
- overtrawlable cable protection to avoid gear snagging;
- protection of temporary exposed cable assets outside safety zones;
- post installation trawl surveys;
- a co-existence plan;
- a fisheries liaison plan;
- funding of long term residual effects, including fisheries related research;

and asked in its subsequent written representation [REP-128] that mitigation be provided in respect of these matters.

4.4.14 Similar wording was used by the Danish Fishermen in their relevant representation [REP-029], and also by the Cooperatie Kottervisserij Nederland u.a (VisNed) [REP-030]. Both parties made several of the same points as the NFFO, as did the Scottish Fishermen's Federation [REP-042], but none of these parties raised any new issues. The Danish Fishermen subsequently agreed a Statement of Common Ground with the applicant in which there were no issues unresolved [REP-077].

4.4.15 NFFO's further involvement in the examination process was jointly with VisNed, both through the SoCG process [REP-108] and in a further joint submission to the Panel [REP-452], in which the following concerns remained:

- cumulative effects;
- reduction in fishing opportunities/loss of earnings;
- displacement; and
- cable protection.

4.4.16 This joint submission also contained a commentary on the DMLs in version 5 of the draft DCO [REP-374] requesting:

- further development of the fisheries liaison plan;
- consultation on the detailed cable specification and installation plan; and
- extension of the post installation trawl surveys to include post lay trawl surveys;

and supporting the MMO proposal for the reporting of dropped and missing objects which could pose a risk to fishing activity.

4.4.17 The applicant responded to these issues by emphasising the degree to which the fisheries liaison plan would ensure effective coexistence and target action to address the following issues.

- A commitment to continuing consultation and liaison with the aim of assisting fishermen wherever possible to safely resume their fishing activities within the operational site and along the export cable corridor. This includes the sharing of results from the cable post installation surveys.
- Measures to minimise as far as is practicably feasible potential impacts on fisheries stakeholders.
- Mitigation options and a mitigation strategy.
- On-going liaison plans.
- Consideration of monitoring of fishing activities.
- Pre-construction and post-construction nearshore fish surveys developed in collaboration with Marine Management Organisation (MMO) & local fisheries stakeholders.
- Re-construction and post-construction offshore fish surveys developed in collaboration with MMO and fishermen active in the Dogger Bank Teesside A and B project areas.

Inshore fishing issues

4.4.18 Inshore fishing shares the same policy framework in NPSs as offshore fishing.

4.4.19 In its relevant representation [REP-035], HFS stated that *'Our clients are the ten inshore trawler skippers who own boats that work from the Fish Quay at Hartlepool Headland … they … operate small … inshore vessels, and are therefore limited … by the weather, tides, and the distance they can safely travel from their home port.'*

4.4.20 The main initial concerns raised by HFS in its relevant representation [REP-035] relate to

- the use of rock armouring to protect the export cable, which *'will eradicate Nephrops habitat and populations, as well as creating de facto no-trawl zones for small vessels.'*; and
- the potential impact of the export cable itself; in particular heat output and *'that the cabling will act as an "electric fence" which will disrupt the migratory patterns of key fin fish species …'*

4.4.21 In REP-035 HFS also expressed concerns about

- *'displacement of currently used anchorage locations for Teesport-bound shipping onto their wider fishing grounds, creating marine hazards through the appearance of significant new anchor mounds on previously clear grounds.' ; and*
- *'the cumulative impact the development will have on inshore commercial fishing, when taken in conjunction with the recent installation of the Breagh pipeline and the Teesside Offshore Wind Farm.'*

4.4.22 These operational issues relating to smaller inshore vessels were refined and expanded by EPIC Regeneration Consultants on behalf of HFS in their responses to the Panel's first round of written questions [REP-165], in their written representation for Deadline III [REP-127] and on the second day of the October hearings.

4.4.23 The residual issues listed as matters for further discussion in the SoCG [REP-271] were as follows:

- the ability of fishing to continue to operate near the export cables during construction and operation;
- gear snagging/safe fishing over unburied protected cables;
- a lack of good data for inshore vessels catch;
- displaced shipping from Teesport dropping anchor in fishing grounds and damaging fish stocks; and
- effects of EMF and temperature on inshore fish stocks

Conclusions

4.4.24 The Panel is satisfied that the applicant has engaged with representatives of the fishing industry on its proposal, and intends to

continue to do so through its Fisheries Liaison Plan as the application proposal develops in detail, with the intention of mitigating and minimising the loss of fishing opportunity and allowing the two industries to co-exist. NFFO, VisNed and EPIC/HFS ceased to express concern about the degree to which their needs would be met via the Fisheries Liaison Plan at the point when the Panel released its consultation draft DCO.

4.4.25 Security for the Fisheries Liaison Plan is provided through the Environmental Management and Monitoring Plan (EMMP) under array DMLs conditions 16(1)(d) and transmission DMLs 3&4 condition 12(1)(d). These sets of conditions provide for the settlement of and Intelligent Scour Protection Managenment Plan, Construction Method Statements, a Cable Specification and Installation Plan, a Fisheries Liaison Officer and a Co-existence Plan. These provide the means whereby remaining residual concerns including ensuring that inshore rock armour is subject to an overtrawl test. There was no conclusive evidence provided that EMF would lead to a fish coralling effect that would impact on inshore fisheries.

4.4.26 On balance, the Panel is satisfied that the adverse effects of the application proposal would be minor. The relevant NPS tests have been satisfied.

4.5 ACHIEVING GRID CONNECTIONS

4.5.1 This part of the report addresses the following issues:

- whether grid connections have been secured for project delivery in a manner that meets policy requirements; and
- whether there are viable cable alignments between the proposed generating arrays and the proposed grid connection point.

Are grid connections secured for project delivery?

4.5.2 The overarching National Policy Statement for Energy (EN-1) states in section 4.9.1 that it is for the applicant of an energy generation project to liaise with National Grid or the District Network Operator to ensure the availability of the necessary infrastructure, capacity and connection point. The policy makes clear that this is a commercial risk for a developer and it is noted that an applicant may not have received or accepted a formal connection offer at the point of making an application. Nonetheless EN-1 sets out that 'the IPC [the Panel] will want to be satisfied that there is no obvious reason why a grid connection would not be possible.'

4.5.3 Regulation 6(1)(b)(i) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 requires applicants of offshore generation stations to supply details of the proposed cable route and method of installation.

4.5.4 Because of the intention to deliver the application proposal in two separate tranches that can be separately developed by 'Bizcos' (see

Chapter 2 above), the two generation projects require two onshore connections to the National Grid in order to distribute energy to points of use.

4.5.5 The proposed means of achieving these connections are set out in application document 7.2 *Cable Details and Grid Connection Statement* [APP-059]. This identifies the details of both offshore and onshore cable routes (with onshore routes requiring the compulsory acquisition of land and interests in land). It sets out proposals for both cable routes to make landfall between Redcar and Marske as high voltage direct current (HVDC) cables, to pass through a shared converter station compound in the Wilton Complex and then to connect via short high voltage alternating current (HVAC) alignments to a proposed grid connection point for both cables at the existing Lackenby substation. A final set of plans identifying the route were submitted before the end of the examination and illustrate the onshore and offshore cable alignment corridors [REP-517 (Offshore) and REPS-520-525 (Onshore)].

4.5.6 The Lackenby substation is operated by National Grid Electricity Transmission (NGET), an interested party in the examination. NGET did not request to be heard orally in the examination. Nor, despite invitation to attend relevant issue-specific hearings did it do so. The District Network Operator (DNO) in this case is Northern Powergrid (Northeast) Ltd (NPG), an affected person which also has assets that could be affected by works to the Lackenby substation. NPG did not request to be heard orally in the examination but they did respond to written questions from the Panel.

4.5.7 Written representations and responses to the Panel's questions led to some concern by the Panel that the delivery of the proposed grid connection points might not be sufficiently secured, a matter that was relevant to the extent that if there was significant doubt about their deliverability and hence their location, then the basis for the proposed compulsory acquisition of land for onshore cable routes could be placed into question.

4.5.8 Within this context, the key questions that the Panel raised can be summarised as follows.

- Whether unconditional grid connection agreements were in place?
- In whose name the agreements were and if they were transferable (noting the intention for separate delivery by 'Bizcos' distinct from the current applicant)?
- Whether upgrading of NGET substation infrastructure was necessary and if so was a separate planning consent required?

4.5.9 The Panel used two rounds of examination questions and a further question under EPR Rule 17 to test these points. In addition the Panel undertook both unaccompanied and accompanied site inspections of the NGET substation at Lackenby (as part of its wider inspections of the entire onshore cable alignments).

4.5.10 During the course of the examination and taking the Panel's questions into account, the applicant was able to reassure the Panel that it had achieved sufficient clarity about the availability of grid connections at Lackenby to satisfy NPS policy. SOCGs were reached with NGET [REP-351] and NPG (the distribution network operator) [REP-099]. Evidence was provided that connections could be achieved within the normal rules applicable to this process [REP-336][REP-409][REP-502]. A side agreement protecting NPG assets was entered into [REP-531][REP-539][REP-543].

4.5.11 The upgrading of equipment within the existing NGET Lackenby substation compound to facilitate the grid connection would be necessary and would require NGET to apply for planning permission [REP-371 see paragraph 1.4.1]. These works are therefore separate from the application proposal.

Conclusion

4.5.12 No significant concerns were raised in relation to these topics, which the Panel investigated from an inquisitorial standpoint, to assure itself that the application proposal responded to NPS policy and we conclude that the proposal is in accordance with the NPS.

Viable cable routes

4.5.13 The cable connections between the offshore arrays and the transmission system could be constructed by a Bizco, or an Offshore Transmission Owner (OFTO) may do this work. If construction were undertaken by a Bizco, the assets must be transferred to an OFTO post construction and installation [section 2.4, page 4 APP-059].

4.5.14 The applicant considered the options available for cable routes that connect the offshore generation to the NGET onshore system. The starting point offshore would be the collector platforms located in each project zone (A and B) the location of which would be defined at detailed design stage [APP-059].

4.5.15 A landing point then needed to be defined. The applicant's search took it to less developed foreshore areas and locations where the alignments would not need to cross cliffs or foreshores widely used for recreational purposes to minimise the effects of landfall.

4.5.16 The end position was determined following discussions between the applicant and NGET on a suitable connection point of adequate capacity at Lackenby substation.

4.5.17 The order limits plan for offshore and onshore show the cable alignment routes that were ultimately selected [REP-516 (Onshore)] and [REP-517 (Offshore)]. The applicant's description of the cable corridor is set out in sections 3.1 (Offshore) and 3.2 (Onshore) of the Cable Details and Grid Connection Statement [APP-059] submitted with the original application. Assessment of the alternative routes is described in ES Chapter 6 [APP-075].

4.5.18 The Panel inspected the onshore cable alignment and examined the entire cable alignment to investigate whether the most appropriate routes had been selected, to ensure the minimum land was being taken and to establish the residual effects. It asked written questions on any remaining concerns in its ExQ1, addressing:

- whether HDD was technically feasible and deliverable at route pinch points such as Blacks Bridge;
- how the depths of burial were determined;
- to establish why the onshore alignment varied in width from 18m to 36m;
- potential EMF effects;
- whether the worst case impacts from cabling had been considered in the ES;
- the vertical and horizontal separation distances of onshore cabling within trenches; and
- the details of the installation at the cable landfall (beach).

4.5.19 The effects of the cable alignment both onshore and offshore in terms of ES effects are discussed further in relevant chapters including Section 4.7 Biodiversity, Ecology and the Natural Environment, 4.9 Social and Economic Effects at Sea, 4.10 Social and Economic Effects Onshore and 6 Compulsory Acquisition, where the requests to change the application are also considered.

4.5.20 The Panel explored these matters and was satisfied that the applicant had used an iterative process to develop a cable route that seeks to use the minimum land on a logical route from generation to grid connection, that the worst case effects have been included within the ES and minimised. The Panel is also satisfied that technical issues (such as HDD) have been resolved, EMFs will not result in significant adverse impacts [REP-039] and that the cable alignments are deliverable.

Conclusions

4.5.21 As a consequence the Panel concludes that, with the exception of the proposed alignment through the Wilton Complex addressed in detail in Chapter 6 below, the relevant NPS tests have been satisfied.

4.6 GOOD DESIGN

4.6.1 This part of the report addresses whether the application proposal is of good design, both onshore and offshore.

4.6.2 PA2008 s10(3)(b) requires the SoS to have regard, in designating an NPS, to the desirability of good design. Section 4.5 of NPS EN-1 sets out the principles of good design that should be applied to all energy infrastructure. It makes clear that whilst good design must take account of aesthetic considerations, it extends more broadly to considerations of sustainability and the effective siting and delivery to mitigate avoidable adverse effects. NPS EN-3 at paragraph 2.4.2 states that:

'Proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, and in the design of the project to mitigate impacts such as noise and effects on ecology.'

4.6.3 The applicant therefore needs to demonstrate clearly how the design evolved to produce a sustainable development with minimum adverse effects, that it is fit for purpose, functional and addresses all relevant issues and constraints well.

Offshore design

4.6.4 The offshore design approach is described in section 5.5 of the Planning and Design Statement [APP-061]. It was developed following engagement with stakeholders to establish broad parameters within which to refine the application proposal. It is not finalised. As is normal in design processes for offshore wind farms, a set of worst case parameters has been used to define the Rochdale Envelope for each array and cable project, within which there is considerable scope and flexibility for the relevant Bizco to deliver a final design that responds to the best available technology and market opportunities at the time of development.

4.6.5 The final design parameters (layout rules) are set out within the Environmental Statement (ES) at page 184, section 5.2 [APP-071] and Schedule 1, version 7 of the draft DCO as submitted at Deadline IX [REP-499]. Final detailed design would be developed and concluded post consent, through the application of the layout rules provided for in the draft DCO.

4.6.6 During the Panel's first round of questions, further information was requested and illustrations were provided of the offshore platforms [REP-182] and the relative scale of the offshore equipment [REP-184].

4.6.7 Each array project boundary is defined by grid references including an exclusion zone (300m) to the eastern edge to ensure no works take place outside of the UK territorial boundary. The maximum number of turbines and associated equipment including collector platforms, converter platforms, accommodation and helicopter platforms, meterological stations, subsea cables and moorings are defined.

4.6.8 The degree to which the design process remained engaged with relevant stakeholders was evidenced during the examination at hearings and within SoCGs. A final summary (version 7) of all SoCGs and their status was requested by the Panel and provided by the applicant at Deadline X [REP-538].

4.6.9 There is evidence within the ES and development of SoCGs demonstrating that an iterative design process was utilised before and during the examination to avoid, or mitigate adverse impacts. For example, the RYA initially submitted a relevant representation expressing concern at the impact of the proposed development on safe navigation. The applicant engaged with the RYA and curved

arrays were removed from the design rules as reflected in a SoCG executed with the RYA in August 2014 [REP-102].

Conclusion

4.6.10 By the end of the examination, there were no outstanding design concerns of relevance and importance and all relevant IPs appeared to be content. This position is underpinned by the provisions of requirement 13 in the draft DCO which requires that the MMO, Trinity House and the MCA approve a final Array Location and Layout Plan. This ensures that final design revisions within the Rochdale Envelope can be considered by bodies responsible for marine planning and licensing, navigation and marine safety.

4.6.11 The Panel concludes that the offshore design approach has addressed all relevant concerns and the requirement for good design within the NPS have been met for the offshore elements.

Onshore design

4.6.12 The onshore design is described in sections 5.7-5.10 of the Planning and Design Statement [APP-061] and comprises a landfall joint pit on the beach between Redcar and Marske-by-the-Sea, an onshore cable alignment across largely agricultural land to the Wilton Complex, two converter station buildings within the Wilton site and a final cable alignment to the National Grid Electricity Transmission (NGET) substation connection at Lackenby.

4.6.13 The location of the works is outlined on the onshore works plan [REP 516]. The onshore cable routes are proposed to run underground. Once an NGET connection offer had been received, the location of a beach/landfall site was explored followed by options for the onshore alignments as described in sections 5.7-5.9 of the Planning and Design Statement [APP-061]. Each option was tested against a wide range of environmental and historic impacts identified in section 5.9.2 of the Planning and Design Statement [APP-061].

4.6.14 During the examination the Panel carried out a series of unaccompanied and accompanied site visits and viewed the entire cable alignment..[HR-003, HR-015, HR-018, HR-021, HR-039, HR-047 and HR-053]. At the Issue Specific Hearings on 11-12 November 2014 and during written questions the Panel tested the level of detail design that had been undertaken to ensure route viability and this is reported on is section 4.5 above.

4.6.15 During the first round of questions (EXQ[1] 6.10) the Panel asked for the drawing of the converter buildings at Wilton to be added to Works Plan 05 [REP-184]. As a consequence the Panel is content that the proposed design is appropriate to the site and setting for these facilities. It was not possible to make the same appraisal in respect of internal works at the NGET substation at Lackenby. However, as these will be subject to a separate design and approval process, the decision maker at that time will be able to ensure good design.

4.6.16 Initial representations on onshore design topics were received from various parties but none were left unresolved at the end of the examination.

Conclusions

4.6.17 The Panel has considered the application and its development through the examination and concludes that the applicant has demonstrated a well-considered, consultative and iterative design process. In doing so it has met the policy requirement of NPS EN-1 and EN-3 relating to good design.

4.7 BIODIVERSITY, ECOLOGY AND THE NATURAL ENVIRONMENT

4.7.1 The application proposals raises two broad sets of issues bearing on biodiversity, ecology and the natural environment:

- matters relevant to European Sites and their values, protected under the Habitats Directive and the Habitats Regulations and the Offshore Marine Regulations - Habitats Regulations Assessment (HRA); and
- matters relevant to other aspects of biodiversity, ecology and the natural environment and the requirements of other legislation and policy.

Habitats Regulations Assessment (HRA)

4.7.2 It should be recorded from the outset that the Panel has undertaken an integrated review of all matters bearing on biodiversity, ecology and the natural environment throughout the examination. However, given the specific needs of the HRA process, this report presents HRA matters in a self-contained way, providing a separate audit trail of its examination and reasoning processes in Chapter 5 below. Chapter 5 identifies matters relevant to European Sites and their values, protected under the Habitats Directive, the Habitats Regulations which apply on land and within 12nm of the shore at sea (in English waters) and the Offshore Marine Regulations which apply in UK waters beyond 12nm.

Other biodiversity and natural environment considerations

4.7.3 The relevant policy framework for these considerations arises from NPS EN-1 section 5.3, which addresses biodiversity. The Government's biodiversity strategy (referenced in paragraph 5.3.5) calls for:

- 'a halting, and if possible a reversal, of declines in priority habitats and species, with wild species and habitats as part of healthy, functioning ecosystems'; and
- 'the general acceptance of biodiversity's essential role in enhancing the quality of life, with its conservation becoming a natural consideration in all relevant public, private and non-governmental decisions and policies.'

4.7.4 Paragraph 5.3.6 makes clear that the beneficial effects of renewable energy development in terms of reducing carbon emissions and the management of climate change effects should be taken into account when considering effects on natural environment assets.

4.7.5 EN-1 makes clear that, in circumstances where levels of impact below those warranted to avoid a site or refuse consent are present, it is important to ensure that requirements and legal agreements provide for the achievement of biodiversity objective in relation to relevant interests, including the conservation of Sites of Special Scientific Interest (SSSIs), Marine Conservation Zones (MCZs), habitats and species generally.

4.7.6 EN-1 at paragraph 5.3.18 makes clear that the applicant should include mitigation for any adverse impacts caused by the application proposal.

4.7.7 NPS EN-3 paragraphs 2.6.58 to 2.6.71 set out relevant natural environment policies. These identify the particular relevance of effects on fish, inter-tidal and sub-tidal seabed habitats, marine mammals and birds. Paragraph 2.6.70 encourages applicants to ensure that mitigation for any adverse effects is designed into their proposals. Paragraph 2.6.71 highlights the value of monitoring and raises the expectation that monitoring will be provided for and secured in the DCO.

4.7.8 NPS EN-3 paragraphs 2.6.75 – 77 identify that development should take account of and minimise its effects on fish species, including fish spawning and migration processes, through site selection, controlling construction works and through the reduction of EMF exposures.

4.7.9 The consideration of inter-tidal habitats in NPS EN-3 is largely confined to the direct effects of cable works and land-falls. Nevertheless, it is also important to consider the effects of met-ocean processes and possible changes upon them on the inter-tidal zone and the applicant has ensured that that has taken place in this case.

4.7.10 In terms of sub-tidal habitats, NPS EN-3 paragraphs 2.6.115 – 120 identify the importance of identifying and minimising construction harm to habitats and species. Cable armouring and burial are identified as key means of controlling heat related effects. Mitigation measures which SoS should expect the applicants to have considered may include:

- ‘surveying and micro-siting of the export cable route to avoid adverse effects on sensitive habitat and biogenic reefs';
- ‘burying cables at a sufficient depth, taking into account other constraints, to allow the seabed to recover to its natural state'; and
- ‘the use of anti-fouling paint might be minimised on subtidal surfaces, to encourage species colonisation on the structures.’

4.7.11 NPS EN-3 paragraphs 2.6.94 – 99 identify that effects on marine mammals should be minimised and mitigated and that regard should be had to SNCB advice in this regard. Construction methods that recognise the sensitivity of marine mammals to piling noise should be considered, including 'soft start' and time limited piling. Monitoring should be carried out to determine the real time effects of construction and operation.

4.7.12 Effects on bird species that are SPA/pSPA qualifying features and UK SPA review species associated with those sites are considered in Chapter 5 of this report, because it was in the context of effects on European sites that effects on bird species largely arose during the examination.

4.7.13 The remainder of this section relates to:

- transboundary effects on European sites outside the UK and UK territorial waters;
- effects on European protected species;
- effects on nationally protected sites;
- effects on SSSIs;
- effects on Marine Conservation Zones; and
- effects on regionally protected sites.

4.7.14 Regard has been had throughout to effects on protected and designated sites - including locally designated sites.

Transboundary effects and European sites outside the UK

4.7.15 The applicant's assessment of transboundary issues in ES Chapter 32 [APP-158] considers effects during construction, operation and decommissioning phases, both in isolation and cumulatively with other relevant plans, projects and activities. The applicant also identified potential impacts on European sites in other EEA States [APP-048].

4.7.16 There are two processes under which other EEA States have been notified and where applicable, consulted, about the proposed development. The first is through the Regulation 24 process of the Infrastructure Planning (Environmental Impact Assessment) Regulations (the EIA Regulations), which is explained by the Panel in Chapter 3, which is an on-going process undertaken by the SoS. The second is through the Panel addressing questions to the seven EEA States which the SoS was of the view that the proposed development was likely to have a significant effect on their environment.

4.7.17 As the Panel records in Chapter 3, Belgium, Denmark, France, the Netherlands, Germany, Norway and Sweden were all notified of the examination process. Whilst Germany registered to be an interested party by making a relevant representation [REP-12], no State participated actively during the examination, as none of these State responded to the Panel's questions seeking their view on the applicant's assessment of environmental effects on their State [PD-023]. The Panel also notes that under the Regulation 24 process,

whilst Germany, the Netherlands and Norway stated that they wished to participate in the Regulation 24 process and were duly consulted by the SoS [PD-030] [PD-031] and [PD-045], only Germany responded, stating that that "from the current state of knowledge and due to the consideration distance to the German EEZ border of 73.8m (Teesside A) and 101.4km (Teesside B) no significant impacts on nature conservation concerns in German EEZ, in particular on the Dogger Bank Special Area of Conservation, can be expected' [PD-044].

4.7.18 The Whale and Dolphin Conservation Trust (WDC) and The Wildlife Trusts (TWT) raised concerns to the Panel about potential impacts on the harbour porpoise feature of the Dogger Bank Sites of Community Importance (SCIs) located in German and Dutch waters [REP-130][REP-292]. The location of these Dogger Bank SCIs in relation to the application is shown on Figure 5.2 and identified in Table 5-1 of the Applicant's HRA screening report [APP-048].

4.7.19 In response to the Panel's second questions [PD-036], the Applicant confirmed that following further discussions with TWT, TWT agreed with the applicant's conclusion of no AEoI for both the German and Dutch Dogger Bank SCIs and identified that TWT's matter of specific concern is in relation to Article 6(2) of the Habitats Directive and the disturbance of harbour porpoise deriving from the German and Dutch sites caused by noise propagating from outside the designated sites [REP-332] [REP-400]. Further detail regarding these points can be found in the applicant's response to TWT's Deadline V submission [REP-349]. Effects on harbour porpoise which may be present at the Dogger Bank site is considered below in the context of European Protected Species.

4.7.20 Whilst the applicant identified potential impacts on European sites outside the UK or UK waters in other EEA States [APP-048], no evidence was submitted to the examination of any specific adverse effects on the integrity of these sites, either from the EEA States where the European sites are located or interested parties.

4.7.21 Therefore, the Panel concludes that with regard to Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, all transboundary biodiversity matters have been addressed and there are not any matters outstanding that would argue against the Order being confirmed.

European protected species (EPS)

4.7.22 Natural England initially identified that the following EPS may be affected by the proposed project [REP-041]:

- Harbour Porpoise (Phoca vitulina);
- Minke Whale (Balaenoptera acutorostrata);
- White beaked dolphin (Lagenorhynchus albirostris);
- Bats;
- Great Crested Newt (Triturus cristatus);

- Common Otter (Lutra lutra); and
- Any other EPS whose presence is identified by pre-construction surveys or from verified evidence provided by third parties.

4.7.23 The onshore SoCG with NE [REP-078] states that it is not considered that an EPS licence will be required for the onshore works. However the need for an EPS licence will be determined by pre-construction surveys provided for under requirement 33 and would be applied for after the DCO application is consented, and prior to the onset of construction.

4.7.24 The offshore SoCG with NE [REP-079] records the need for an EPS licence where piling of foundations is proposed as secured through the Marine Mammal Mitigation Protocol [MMMP]. The MMMP is secured through conditions 16 of the recommended array DMLs and conditions 12 of the recommended transmission DMLs. As recorded in the SoCG with the MMO [REP-112], the MMO is the licensing body for EPS licences for offshore species.

4.7.25 At the final Issue-specific Hearing on natural environment issues [REP 448-450], Dr Chris Gibson for NE confirmed that, in line with answers to Panel Written Questions 2.3 and 2.5, Natural England believes that there is no apparent impediment in principle to granting onshore and offshore EPS licences should they be required if the DCO is granted in its then current form. Dr Gibson also confirmed that the EPS licensing timescales suggested within the applicant's submissions are appropriate. The Panel can confirm that it has not recommended any changes to the DCO that would affect this agreement.

4.7.26 Having regard to the views of NE and the MMO, the Panel concludes that with the requirements and conditions specified above, included within the Panel's recommended DCO and DML, to secure and deliver the identified mitigation, there is no impediment in principle to granting EPS licences if required. Therefore, the Panel recommends to the SoS that there is no impediment to the making of the recommended draft DCO in respect of European Protected Species.

Nationally protected species

4.7.27 Nationally Protected Species (NPS) - Natural England has identified that the following NPS may be affected by the proposed project [REP-041]:

- Grey Seal (Halichoerus grypus);
- Harbour Seal (Phoca vitulina);
- Water Vole (Arvicola amphibious);
- Lapwing (Vanellus vanellus);
- Golden Plover (Pluvialis apricaria); and
- Any other NPS that has been identified as present within the zonal envelope by pre-construction surveys or from verified evidence provided by third parties.

4.7.28 As the examination progressed, these concerns were addressed through the applicant's agreement of mitigation provisions in the DCO. The final remaining concern (in tandem with North York Moors National Park Authority) related to the over-wintering Golden Plover as a feature of the North York Moors SPA. However, NE these concerns were resolved [REP448-450].

4.7.29 Therefore, in the Panels view, there is not any matter outstanding regarding nationally protected species that would argue against the Order being confirmed.

Sites of Special Scientific Interest (SSSI)

4.7.30 NE raised initial concerns that the application proposal might adversely affect [REP-041]:

- Durham Coast SSSI;
- Farne Islands SSSI; and
- Flamborough Head SSSI.

4.7.31 At the first Issue-specific Hearing on natural environment issues [REP-286] NE removed Durham Coast SSSI from contention. At the final Issue-specific Hearing on natural environment issues [REP 448-450], Ms Louise Burton for NE advised that Natural England's advice for the Farne Islands SPA and Flamborough and Filey Coast pSPA mirrors Natural England's advice for the underlying SSSIs - that the proposed development would not damage the special interest feature of these sites.

4.7.32 Therefore, in the Panels view, there is not any matter outstanding regarding SSSIs that would argue against the Order being confirmed.

Marine Conservation Zones (MCZ)

4.7.33 NE raised initial concerns that the application proposal might adversely affect [REP-041]:

- Compass Rose (Amber rMCZ[17])
- Runswick Bay (Amber rMCZ)

4.7.34 At the final Issue-specific Hearing on natural environment issues [REP 448-450], Ms Louise Burton for NE confirmed that both of these sites are yet to be designated. In the absence of published conservation objectives and in order to treat the rMCZs as full MCZs, the applicant had presented a precautionary worst case assessment. This concluded that a significant adverse impact was not predicted for each site. NE agreed with the applicant that a significant adverse impact would not arise at either rMCZ, under these worst case assumptions [REP-448].

[17] An rMCZ is a Recommended Marine Conservation Zone.

4.7.35 In the light of this advice, the Panel is satisfied that there are no outstanding impacts regarding MCZ that need additional mitigation or management in the DCO.

Panel conclusions

4.7.36 These were all agreed to be matters that could be managed within requirements, which were tested through the Panel's consultation draft DCO. By the end of the examination NE was satisfied that all relevant mitigation had been provided for and did not raise any outstanding concerns in relation to its matters of interest provided for in requirements. It follows that these were taken forward into what became the applicant's preferred draft DCO, discussed in Chapter 7 below.

Regional sites

4.7.37 Tees Valley RIGS Group expressed concerns that the application proposal might affect the locally designated geological site Red Howles RIG, located in the intertidal zone close to the landfall site at Marske-by-the-Sea. The group sought physical mitigation ensuring that the landfall site would not pass directly into or damage the site. They also sought a commitment from the applicant to provide publicity for geological information associated with the project [REP-315, 388].

4.7.38 The applicant contended that the site was avoided by the landfall [REP-443] - a fact that became apparent when the Panel conducted an accompanied site inspection to its agreed location, although it should be noted that the RIG itself was not observed, as despite a predicted low tide, sand cover due to high waves and winds had left the feature unable to be seen. The applicant said that it was willing to provide direct access to geological information generated by the project and to brief the RIGS group. However, it was unwilling to concede a financial commitment to publicising geological information in the DCO or an agreement, because it took the view that this was not necessary, having regard to the lack of direct impact on the site [REP-443].

Panel conclusions

4.7.39 The Panel is content that the location of the landfall will not damage the RIGS site and cannot find a nexus between the effect of the application on the site and a basis for a financial agreement or provision in the DCO. The Panel notes the existing transfer of knowledge between the applicant and the RIGS group and welcomes it. Given the lack of harm to the site, the existing commitment from the applicant to share knowledge is sufficient and the Panel recommends that a further financial commitment would be disproportionate.

4.8 CONSTRUCTION, OPERATION AND DECOMMISSIONING AT SEA

4.8.1 This part of the report addresses the following issues:

- construction effects;
- operational effects; and
- decommissioning effects at sea.

4.8.2 The primary focus here and in the following sections of this chapter is to report the Panel's investigation of issues that were not widely raised in representations and where by the end of the examination the applicant had agreed to secure all necessary provision within the DCO.

Construction effects

4.8.3 Offshore construction is detailed principally in chapter 5 of the Environmental Statement [APP-071].

4.8.4 The main issues relating to offshore construction were identified by the Panel as relating to:

- turbine foundations;
- drilling and disposal of spoil arisings;
- noise from piling;
- marine trenching; and
- cable protection.

4.8.5 In respect of choices of turbine foundation, paragraph 2.6.32 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) places the onus *'on the applicant to ensure that the foundation design is technically suitable for the seabed conditions, including uncertainty in the geological conditions'* while also requiring that *'the foundations will not have an unacceptable adverse effect …'* With reference to drilling and disposal of spoil arisings, paragraph 5.14.7 of the Overarching National Policy Statement for Energy (EN-1) requires that *'adequate steps have been taken to minimise the volume of waste arisings'*.

4.8.6 Paragraph 2.6.92 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) requires *'where necessary'* an assessment of noise effects. As a measure to mitigate effects of noise from piling, paragraph 2.6.99 states that *'soft start procedures during pile driving may be implemented'*.

4.8.7 Paragraph 2.6.119 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) requires that *'burying cables at a sufficient depth … to allow the seabed to recover to its natural state'* be considered as a mitigation measure: also paragraph 2.6.197 requires that *'burying of cables to a necessary depth'* be considered as a mitigation measure. Marine trenching is the method adopted in this application. In respect of cable protection (where burial of cables is not feasible), paragraph 2.6.196 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) requires *'minimising the quantities of rock that are used to protect cables'* while also *'taking into account other relevant considerations such as safety'*.

4.8.8 The Panel examined these topics to ensure that construction methods and their effects were properly documented in the ES and that there were no residual un-assessed impacts or disputes. During the examination the applicant devoted considerable time to seeking common ground with IPs and offering revisions to the draft DCO and its supporting documents. This process secured a wide range of agreement to the point that when the Panel issued its consultation draft DCO the only major issue remaining was to clarify how a substantial body of supporting plans to assure agreed standards of delivery would be secured. Paragraphs 2.2.19-2.2.21 above record the operation of this process. As a consequence of this, by Deadline IX there were no concerns remaining from IPs that any of these matters were inadequately secured in the DCO or its supporting documents.

4.8.9 By way of example, the Hierarchy of Plans [REP-494] demonstrates how this suite of issues is managed and performance is secured. The starting point is the Environmental Management and Monitoring Plan (EMMP) secured by DMLs as shown in the Hierarchy document. This in turn drives a cable specification and installation plan secured by the DMLs. It also drives the preparation of construction method statements and a disposal scenario statement, equivalently secured in the DMLs. The provision of this level of security through plan documents provided assurances to the Panel that NPS policy would be met. It provided IPs with sufficient surety that their concerns would be addressed. It followed that after Deadline IX, the Panel received no further engagement from IPs seeking different methods of securing appropriate construction standards in these topics.

4.8.10 The Panel is satisfied that there is sufficient security in the DMLs (Array DMLs conditions 16(1)(d)) and Transmission DMLs conditions 12(1)(d) together with the Environmental Management and Monitoring Plan (EMMP) to ensure that the NPS policy identified above can be met.

Operational effects

4.8.11 Operational effects offshore are also detailed in chapter 5 of the Environmental Statement [APP-071]. The main issues inquired into by the Panel were offshore operations relating to:

- cable protection; and
- turbine array layout and spacing.

4.8.12 Adequate and effective cable protection was identified by the Panel as an issue principally for fishing vessels. The applicant *'will endeavour to make the installed systems over-trawlable by fishing vessels'* [APP-071]. However, it is recognised by the applicant that cable maintenance and repair vessels and guard vessels will be required to undertake cable and cable protection repairs over the lifetime of the project [APP-071].

4.8.13 Regarding turbine array layout and spacing, paragraph 2.6.108 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) states that *'wind turbines should be laid out within a site in a way that minimises collision risk …'* (for birds) and paragraph 2.6.174 states that *'Mitigation measures will include site configuration …'*

4.8.14 Also of direct relevance to turbine array layout and spacing, Marine Guidance Note (MGN) 371 *'provides guidance on UK Navigational Practice, Safety and Emergency Response Issues for OREI'* (Offshore Renewable Energy Installations) [REP-007] and in response to part 2 of question 9.3 of the Panel's first round of written questions, the applicant *'can confirm that Dogger Bank Teesside A&B will be designed to satisfy the requirements for emergency response as per MGN 371 guidance …'* and that *'the rules have been agreed with the MCA and other key stakeholders.'* [REP-169]. DML condition 18 requires that the ERCoP be in accordance with MGN-371.

4.8.15 This raised the issue of curved arrays, which was a concern of RYA [REP-007] and the MCA [REP-066] in their relevant representations. This concern was further clarified by RYA in its response to question 9.1 of the Panel's first round of written questions [REP-161].

4.8.16 In its response to part 6 of question 9.3 of the Panel's first round of written questions, the applicant stated that *'curved arrays have been removed from the Rochdale Envelope and only the option for curved boundaries remains'* and that this was done *'in response to the concerns raised …'*[REP-169].

4.8.17 Turning to the remaining issues, concerns from the fishing community in respect of over-trawling were addressed through the application of the Fisheries Liaison Plan, produced as a consequence of the Environment Management and Monitoring Plan. Confirmation of the movement away from the possible use of curved arrays in the context of the Fisheries Liaison Plan in turn provided the fishing community with confidence that fishing vessels and techniques that they had expected to be excluded from the array areas would not be excluded. Early engagement between the undertakers and the fishing industry would enable potential difficulties with (eg particular vessels or cable methods) to be addressed. This in would support what amounted to dynamic mitigation or a form of adaptive management.

4.8.18 Again, the Panel was left with no substantive submissions that these issues had been addressed in a way this did not meet NPS policy. It is satisfied that policy has been met.

Decommissioning effects

4.8.19 Paragraph 2.6.85 of NPS EN-3 requires that *'cable … decommissioning has been designed sensitively …'*

4.8.20 It is stated in paragraph 2.6.53 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) that *'section 105 of the Energy Act 2004 enables the SoS to require the submission of a*

decommissioning programme …' and in paragraph 2.6.54 that where consent is granted the consent *'should include a condition requiring the applicant to submit a decommissioning programme … before any offshore works begin'.*

4.8.21 They are also subject to specific control through the preparation and submission of a decommissioning EIA and a decommissioning plan prepared under the Energy Act 2004.

4.8.22 Decommissioning at sea remained a live issue in relation to HRA and impacts on the Dogger Bank SCI. This is dealt with in Chapter 5 below. The Panel concludes that any other concerns remaining in respect of decommissioning have been adequately addressed by the applicant with reference to the relevant policy tests.

4.9 CONSTRUCTION, OPERATION AND DECOMMISSIONING ON LAND

4.9.1 This part of the report addresses the following issues:

- construction effects; and
- operational effects.

4.9.2 The main issues relating to the land-based aspects of construction inquired into by the Panel were:

- the landfall site;
- open trench cable installation and topsoil strip;
- horizontal directional drilling (HDD);)
- construction compounds;
- haul roads;
- reinstatement of agricultural land;
- access to industrial premises; and
- construction noise and traffic.

4.9.3 Paragraph 5.14.7 of the Overarching National Policy Statement for Energy (EN-1) requires that *'adequate steps have been taken to minimise the volume of waste arisings'.* There is little other specific policy that addresses onshore construction and operational effects

4.9.4 In relation to these issues, once again the Hierarchy of Plans [REP-494] demonstrates the linkages between proposed methods, mitigation, plan documents and the DCO. Individual concerns about subject matters such as the reinstatement of or securing access to agricultural land and drainage were raised in relation to compulsory acquisition and are reported upon in Chapter 6. Similarly, concerns about construction and operational effects on industrial land are also explained in Chapter 6, which in the Wilton Complex ties back to the Wilton Provisions examined in Chapter 7 (the DCO).

4.9.5 Again, the applicant demonstrated attention to detail to bring about a means of identifying, managing and mitigating these impacts to the extent that, with the exception of specific disputes recorded elsewhere

in this report, IPs did not pursue further changes to secure responses to these issues.

4.9.6 The Panel is satisfied that any impacts are minor in nature and not so significant that they weigh against the making of the Order, and that the applicant has complied with NPS policy.

Operational effects

4.9.7 Onshore operational effects considered here are detailed principally in chapter 5 of the Environmental Statement [APP-071] but also in chapter 29 [APP-152].

4.9.8 The main issues for investigation relating to land-based operations were identified by the Panel as:

- electromagnetic fields; and
- noise from the converter stations.

Electromagnetic fields

4.9.9 The National Policy Statement for Electricity Networks Infrastructure (EN-5) is chiefly concerned with the overhead aspects of onshore networks, but paragraph 2.10.5 of EN-5 says that *'the Health Protection Agency (HPA) … provides advice … on limiting exposure …'*

4.9.10 The applicant has conducted a Health Impact Review, which is presented in Appendix C to chapter 5 of the Environmental Statement [APP-074]. In paragraph 5.3.9 it says that '*buried cables, such as those proposed for Dogger Bank Teesside A and B, will be covered with metallic screens and therefore neither the HVDC nor HVAC cable will emit any external electric fields …'.* In its response to question 6.2 of the Panel's first round of written questions, Public Health England confirmed its agreement with this statement [REP-162].

4.9.11 In respect of onshore EMF, the applicant has concluded a SoCG with Public Health England [REP-098] with the Health Impact Review appended making clear that there are no areas of disagreement in relation to health impacts.

Noise from the converter and substations

4.9.12 Paragraph 5.11.6 of the Overarching National Policy Statement for Energy (EN-1) states: *'Operational noise … should be assessed using … the relevant British Standards and other guidance …'*

4.9.13 In its relevant representation [REP-025], Redcar and Cleveland Borough Council raises the issue of *'the siting of the converter stations and the associated impacts … including noise generation …'. However, in its LIR, the Council was clear that noise impacts had been appropriately managed through the siting of the converter station behind existing bunds together with the proposed mitigation of additional bund construction secured in the DCO as work No 7L.*

4.9.14 The Panel was able to improve its understanding of this issue during an accompanied site visit to the Wilton Complex on the afternoon of 15 October 2014, when it was able to view the proposed converter stations site and the location and extent of the existing and proposed bunding that will provide substantial noise attenuation between the site and the houses at Lazenby.

4.9.15 The Panel again tested this issue in relation to the NGET substation site at Lackenby and its proximity to existing housing, but the Council again indicated that it was content and there were no further submissions.

4.9.16 In its response to question 10.2 of the Panel's first round of written questions, the applicant stated that *…'there are no areas of disagreement or unresolved matters … in relation to noise … subject to the inclusion of operational noise limits secured through the Draft DCO …'* (Requirement 28). Further, the Code of Construction Practice (paragraph 3.1) requires the production of a Construction Environmental Management Plan (CEMP) before the commencement of works, for approval by the local planning authoruty secured under requirement 27. Noise performance is managed by the CEMP [REP-493].

Conclusions

4.9.17 The Panel concludes that concerns raised in respect of operational issues, and in particular electromagnetic fields and noise from the converter stations, have been adequately addressed by the applicant with reference to the relevant policy tests, subject to noise levels being secured through the recommended draft DCO.

Decommissioning effects

4.9.18 Paragraph 2.6.85 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) requires that *'cable … decommissioning has been designed sensitively …'*

4.9.19 It is stated in paragraph 2.6.53 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) that *'section 105 of the Energy Act 2004 enables the SoS to require the submission of a decommissioning programme …'* and in paragraph 2.6.54 that where consent is granted the consent *'should include a condition requiring the applicant to submit a decommissioning programme … before any offshore works begin'.* In the absence of guidance in the National Policy Statement for Electricity Networks Infrastructure (EN-5) it is unclear whether this applies also to the onshore elements of the proposal.

4.9.20 Further guidance on decommissioning is also available in the DECC guidance note 'Decommissioning of offshore renewable energy installations under the Energy Act 2004'.

4.9.21 Decommissioning of the landfall infrastructure onshore is described briefly in paragraph 6.7.18 of chapter 5 of the Environmental Statement [APP-071] where it is noted that *'landfall infrastructure will be left in situ …. Any requirements would be agreed with statutory consultees.'*

4.9.22 It is noted in paragraph 6.7.19 of chapter 5 of the Environmental Statement [APP-071] that *'there is currently no statutory requirement for decommissioned cables to be removed … removal of the cables would bring about further environmental impacts … it is therefore proposed that the cables will be left in situ …'*

4.9.23 In respect of the onshore converter stations, paragraph 6.7.20 of chapter 5 of the Environmental Statement states that they *'will be removed …. and the land will be restored and reinstated '*: this *'broadly follows a reverse programme to the construction process.'*

4.9.24 It follows that onshore decommissioning does not give rise to access, haul, noise and related impacts in relation to the cable alignments. The converter stations are located within an established industrial area, where works to bring about their decommissioning will be minor.

Conclusions

4.9.25 The Panel has carefully considered the material in the application (principally in chapter 5 of the Environmental Statement [APP-071]) and the policy context. There were no new issues raised either in the responses to written questions or orally at the issue-specific hearings.

4.9.26 The Panel has carefully considered decommissioning issues, both in the light of the Environmental Statement and the policy framework outlined above, and concludes that there are minor residual effects.

4.10 SOCIAL AND ECONOMIC EFFECTS AT SEA

4.10.1 This part of the report addresses the following issues:

- effects on shipping and other transport;
- extractive industries; and
- leisure and recreation effects.

Shipping and other transport

4.10.2 Paragraph 2.6.147 - 167 of NPS EN-3 requires the consideration of impacts on navigation, safety zones and the provision of a safety / search and rescue plan.

4.10.3 Paragraph 5.4.14 of the NPS EN-1 states that the Panel …*'should be satisfied that the effects on civil and military aerodromes, aviation technical sites and other defence assets have been addressed by the applicant* …'

4.10.4 The Panel has investigated these issues as in recent offshore wind developments representations have raised relevant and important issues in respect of them. In this examination however, no specific issues were raised by IPs.

4.10.5 The array sites are a long way from shore, outside frequented shipping lanes and are not widely used for recreational boating. There were no representations in respect of shipping or marine navigation by the MCA once the applicant had agreed to eliminate curved array layouts and to secure an Emergency Response and Cooperation Plan provision in the DCO [REP-066]. Trinity House was satisfied with the DCO and this was made clear in a SOCG [REP-086]. There were no representations from port authorities. There is a SoCG between the applicant and MoD DIO [REP-104] with no matters left outstanding in relation to military aviation. The CAA relevant representation [REP-016] *'confirms that appropriate statutory aviation consultees have been identified'*. The initial CAA SoCG [REP-105] showing no matters unresolved was unsigned. However, a written question from the Panel resulted in the signature of a further SoCG [REP-326] at Deadline VI with no outstanding concerns. NATS Ltd [REP-008] clarified that it had no objections.

Conclusions

4.10.6 The Panel is satisfied that any impacts are minor in nature and not so significant that they weigh against the making of the Order, and that the applicant has complied with NPS policy.

Extractive industries

4.10.7 Paragraph 2.6.35 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) notes that …*'there may be constraints imposed … because of … the presence of other offshore infrastructure …'* and paragraph 2.6.187 says that …*'detailed discussions … should have progressed as far as reasonably possible …'*

4.10.8 Potential in combination impact issues with unconsented marine aggregates extraction proposals are dealt with in relation to HRA in Chapter 5.

4.10.9 At the beginning of the examination, Cleveland Potash made representations expressing concern about the passage of cable alignments above its sub-sea mine at Boulby [REP-033][REP-064]. Whilst initially this concern was pursued strongly and the Panel was requested to inspect the mine, by the time that site visit arrangements were to be finalised, Cleveland Potash had reached agreement with the applicant. Its submissions were withdrawn [REP-194].

Conclusions

4.10.10 The Panel concludes that there are no outstanding matters of concern in relation to effects on leisure and recreation, and that the applicant has complied with NPS policy.

Leisure and recreation

4.10.11 Paragraph 5.12.3 of the Overarching National Policy Statement for Energy (EN-1) says that the applicant's assessment should consider *'effects on tourism…'* and paragraph 5.12.9 says that the Panel *'should consider whether mitigation measures are necessary '.*

4.10.12 These issues are chiefly covered in chapter 23 of the Environmental Statement [APP-133]. An opportunity to make oral representations on them was provided at Matter H of the second Issue-Specific Hearing on 12 November 2014.

4.10.13 The RYA is the national body for all forms of competitive and recreational sailing. The RYA is *'content that its concerns and position on operational safety zones, layout and export cable burial and landfall are reflected in Table 2.2 of Chapter 16 of the Environmental Statement on Shipping and Navigation.'* The SoCG indicates that all matters are resolved between the applicant and RYA in relation to shipping and navigation [REP-102] with their concerns about curved arrays having been met by the applicant removing these from the scheme.

4.10.14 The Cruising Association is Britain's leading membership organisation for recreational boating. In its relevant representation [REP-050] it states that it *'has submitted views relevant to recreational sailing in the area',* is *…'satisfied that you have taken these into account ..'* and *…'will not register as an interested party or make further representations …'*.

4.10.15 The Environment Agency is a statutory consultee in respect of the marine environment and bathing waters in the landfall area between Redcar and Saltburn-by-the-Sea. In its relevant representation [REP-034] it states that *'the final application documents acknowledge the importance and the timing of the Bathing Water Protected Area and the constraints associated with this area'* and that it has no objection to the proposed development. There have been discussions with the applicant [REP-089] and there are no matters of specific disagreement [REP-090].

Conclusions

4.10.16 The Panel concludes that there are no outstanding matters of concern in relation to effects on leisure and recreation and that the applicant has complied with NPS policy.

4.11 SOCIAL AND ECONOMIC EFFECTS ON LAND

4.11.1 This part of the report addresses the following issues:

- industry and employment; and
- traffic and transport effects.

4.11.2 The construction, operational and decommissioning effects are each reviewed and considered in terms of their onshore land-based impacts on these areas of interest. Reference should also be made to the Panel's separate analysis of effects on the Wilton Complex above, which due to its significance has been dealt with separately. Agricultural issues were raised in the context of objections to compulsory acquisition and are addressed in Chapter 6.

Employment

4.11.3 Paragraph 5.12.6 of the Overarching National Policy Statement for Energy (EN-1) says that regard is to be had *'to the potential socio-economic impacts of new energy infrastructure identified by the applicant and from any other sources … both relevant and important to the decision.'* Policy considerations include the National Planning Policy Framework, the National Policy Statements EN-1, EN-3 and EN-5 and local planning policy (the Redcar and Cleveland Local Development Framework 2007): these have also been considered by Redcar and Cleveland Borough Council in the preparation of its Local Impact Report.

4.11.4 Matters related to other employment in the area are discussed in chapter 22 of the Environmental Statement, where it is noted that manufacturing is the largest employer both in the Redcar and Cleveland Borough Council area and the North East region and that the proposal would offer significant potential to build on this position [REP-132].

4.11.5 The North East Process Industry Cluster (NEPIC) welcomes the applicant's proposal and explains that *'it seeks to secure investments in low carbon energy to support the manufacturing base especially here on Teesside … we therefore see this development as offering a new source of low carbon energy … which can be integrated into the industrial complex … this will provided (sic) benefit in terms of … job creation …'* [REP-021].

4.11.6 In its relevant representation [REP-025] Redcar and Cleveland Borough Council draws attention to *'the socio-economic benefits from the development including supply chain benefits and local labour …*' and stated that these themes would be developed further in its LIR and SoCG.

4.11.7 In the LIR [REP-073] Redcar and Cleveland Borough Council officers recommend *'that the Council raises no objection to the proposal'* and in the SoCG agreement on various socio-economic issues including employment (paragraph 3.5.4) has been reached with the applicant [REP-087]. The Panel provided the Council with opportunities to make more specific requests in relation to employment and economic benefits but it did not chose to do so.

4.11.8 Hartlepool Borough Council also submitted a written representation [REP-051] stating that it …*'would have no objections to the proposal'*

and … *'fully supports the development …'*. It goes on to say that, working with Tees Valley LEP it … *'has achieved Enterprise Zone status for the Hartlepool Port Estate … the port is well placed to secure major investment in wind turbine manufacture …'* and this was included in a draft unsigned SoCG[REP-121].

4.11.9 Tees Valley Unlimited (the Tees Valley LEP) made a written representation [REP-072] explaining its role, stating that offshore wind is identified as a key sector, and fully supporting the project, which …*'builds upon the continued investment in the offshore wind energy market … creating jobs …'*

4.11.10 Tata Communications is an onshore and offshore cable and pipeline operator. It agreed draft DCO text and entered into a SoCG with the applicant [REP-119].

4.11.11 Tata Steel [REP-377] wrote to the Panel following notification of a change to the application, raising concerns in respect of disruption to operations, both in terms of highway access and the cumulative effect of possible interference from the proposed York Potash project which may also affect them. Sahaviriya Steel Industries UK Ltd wrote to the applicant in similar terms and the applicant reported this correspondence to the Panel.

4.11.12 These companies' premises are some distance away from the area affected by the application change and its comments were plainly not relevant to that change. However, its representation raised issues which were considered relevant to the project as a whole, so the Panel decided to accept the representation and enable both entities to join the examination if they wished. As matters eventuated, it became clear that their concerns related to prospective works for the Dogger Bank Teesside C and D project in respect of which an application has not been submitted to the Planning Inspectorate.

4.11.13 The York Potash project proposes a new mineral transport alignment that would cross the cable alignments. However a SoCG [REP-104] has clarified that it would do so sufficiently far underground that the applicant sought to vary the application to release land from compulsory acquisition on the basis that it no longer needed to provide for a HDD alignment crossing point.

Conclusions

4.11.14 The Panel concludes that there are few short term (construction) adverse impacts of the application proposal on established businesses in the locality, reserving from this finding its discussion of the Wilton Complex above and of agriculture and fishing. There are none that indicate a basis for change to the DCO. In the medium to long term, the application proposal could generate significant employment benefits. However, the degree to which these are localised will depend on decisions yet to be taken, such as the location for steel fabrication and the port(s) chosen for construction and servicing. As

these need not necessarily be located on Teesside (or even in the UK) the Panel has given limited weight to these benefits.

4.11.15 Issues arising from the interface between the application and the York Potash project have been addressed.

Traffic and transport

4.11.16 Paragraph 5.13.11 of NPS EN-1 permits the attachment of *'requirements to a consent where there is likely to be substantial HGV traffic that control numbers of HGV movements to and from the site ... during its construction and … on the routing of such movements … '* and that …*'ensure satisfactory arrangements for reasonably foreseeable abnormal disruption, in consultation with network providers …'*

4.11.17 Traffic and transport issues are dealt with by the applicant in chapter 28 of the Environmental Statement [APP-150].

4.11.18 In its relevant representation [REP-010], the Highways Agency (HA) requests that HDD be used at all trunk road crossings in accordance with its guidance note HA 120/08 and that it be involved in the preparation of the Construction Traffic Management Plan and the Construction Travel Plan, particularly in respect of Abnormal Indivisible Load (AIL) route confirmation.

4.11.19 Although HA notes that some street furniture, signage and lighting may require relocation to accommodate abnormal loads, HA considers that the Transport Assessment *'has considered all issues discussed during the scoping stages'* and that it has no capacity or safety issues [REP-010]. This was confirmed in the applicant's response to question 13.2 of the Panel's first round of written questions.

4.11.20 In its relevant representation [REP-025] Redcar and Cleveland Borough Council raised the issue of *'highway implications during the construction phase … including any temporary road closures.'*

4.11.21 These issues are considered further in the Council's Local Impact Report [REP-073] where it is noted that the highway authority is satisfied with the submission: in particular, *'haul roads will minimise the use of public roads by construction traffic … a Construction Traffic Management Plan and a Construction Travel Plan shall be submitted …to ensure that construction traffic is properly managed.'*

4.11.22 This position was explored further and confirmed in the Council's response to question 13.4 of the Panel's first round of written questions and a SoCG has been agreed between Redcar and Cleveland Borough Council as highway authority and the applicant [REP-073].

4.11.23 An issue raised by the Panel in this respect was (as set out in paragraph 4.11.14 above) the potential for port servicing to occur in a location other than Teesside. As has become good practice in offshore wind DCOs, the Panel suggested that the Order should be changed to

provide for the preparation of a port transport plan and for future decisions in respect of this to be taken by the local planning authority for the port, wherever this might be located (assuming it to be in England and Wales.) the applicant agreed. This is secured in requirement 32.

4.11.24 The applicant's proposal includes HDD at Black's Bridge, where Redcar Road crosses the Middlesbrough to Saltburn railway line, operated both by freight services and by Northern Rail passenger services. In response to question 3.4 of the Panel's first round of written questions, the applicant and Redcar and Cleveland Borough Council appeared satisfied that final details would be agreed at a later date.

4.11.25 Although the question was addressed to all relevant stakeholders, there was no response from either of the rail operators or from Network Rail.

4.11.26 Royal Mail was granted interested party status [REP-068] and made a written representation [REP-197] stating that it had no issues or concerns with the project itself but indicating concern at any possible road closures, bearing in mind its statutory duty as a Universal Service Provider *'to deliver mail to every residential and business address in the country … on a daily basis'*. In correspondence with the applicant [REP-289], BNP Paribas for Royal Mail notes that … *'there is no information on the scope or content of the Construction Traffic Management Plan and Construction Travel Plan or how and when [the applicant] will consult with potentially affected parties …'* and requests confirmation that the applicant …*'liaises fully with Royal Mail … over the … detailed construction, traffic and mitigation plans … '.*

The Panel's findings

4.11.27 The Panel concludes that the applicant's proposal will cause some short-term adverse impacts on traffic and transport during construction. However, it concludes that these impacts can be significantly mitigated by use of HDD at all road and rail crossings and by ensuring proper advance consultation with all authorities and users in the preparation of both the Construction Traffic Management Plan and the Construction Travel Plan secured in requirement 31 [REP-494] of the recommended draft DCO.

4.11.28 Requirement 32 secures the Port Access and Transport Plan sought by the Panel. This mitigates the potential impact of port related access, bearing in mind that the selection and use of a port for construction purposes has the potential to deliver substantial

4.11.29 The Panel concludes that a proper and full site investigation and detailed design of the HDD crossing at Black's Bridge is secured in the Outline Code of Construction Practice which provides for a HDD method statement for the rail crossing secured under the recommended draft DCO requirement 26.

4.12 THE HISTORIC ENVIRONMENT,

SEASCAPE, LANDSCAPE AND VISUAL EFFECTS

4.12.1 This part of the report addresses:

- seascape, landscape and visual effects;
- the marine historic environment; and
- the historic environment onshore.

4.12.2 NPS EN-1 section 5.9 sets out policy in respect of landscape and visual impacts, which paragraph 5.9.1 indicates is intended also to be relevant to seascapes.

4.12.3 Paragraphs 5.9.9 – 13 consider the approach to be taken to nationally designated landscapes. The application site is not within any such landscapes. However, elements of the onshore works are close to the boundary of the North York Moors National Park. Paragraph 5.9.12 makes clear that the aim should be 'to avoid compromising the purposes of designation'. However, NPS EN-1 paragraph 5.9.13 makes clear that '[t]he fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent'.

4.12.4 The specific considerations for this project are:

- The closest point of the offshore arrays to the UK north east coastline is identified in table 2.1, page 17 of the Planning and Design Statement [APP-061] as 123km. Distances to the shores of other EU nation states are considerably further. Consequently there will be no visual impact of the array developments from any shore.
- The most substantial onshore development consists of cables that are proposed to be buried. Whilst these works located above ground would have the potential to be perceived within the setting of the National Park, as they are largely buried, they do not affect its setting.
- The most substantially scaled onshore development above ground, the proposed converter stations, are proposed to be located within an existing heavy industrial area, occupying buildings that in form and mass relate well to the existing buildings nearby. Existing bunding within the Wilton Complex will significantly limit the visibility of the converter station from nearby dwellings. There is no impact on the national park and its setting from the converter station development.

4.12.5 The Panel gave careful consideration to the potential visual impacts of additional structures that are likely to be developed in the NGET Lackenby substation site. In the Panel's first unaccompanied site inspection, it noted that whilst some of the substation site is screened by bunding and planting from existing housing, other parts of the site have no screening at all. However, having noted that any new structures in this location within the NGET compound will be the subject of a separate consent process and having sought views from

RCBC which did not seek new landscape mitigation measures in the DCO, the Panel is content and does not recommend any changes to the DCO in this location.

Conclusions

4.12.6 The Panel concludes that there are no seascape, landscape and visual impact considerations that indicate against the grant of the Order by the SoS.

4.13 CONCLUSIONS ON DEVELOPMENT NEED AND APPROACH

4.13.1 This part of the report addresses four issues:

- the application of the decision regulations;
- it considers the need for the development;
- it considers the applicant's justification for the selection of the application site, including the consideration of alternatives; and
- it commences consideration of representations that the harm done by it would outweigh its benefits.

It undertakes these tasks in the light of the planning issues and evidence identified in this Chapter.

Decision Regulations

4.13.2 The Panel has considered the Infrastructure Planning (Decisions) Regulations 2010 and further to regulation 7, has considered the implications of the United Nations Environmental Programme Convention on Biological Diversity of 1992 for the application.

Need

4.13.3 National Policy Statements (NPS) EN-1 and EN-3 provide a strong policy basis for the need for renewable energy development and for the proposition that offshore wind farms are a means of meeting that need.

4.13.4 NPS EN-1 at section 2.2 makes clear that the UK is committed to meeting its legally binding target to cut greenhouse gas emissions by at least 80% compared to 1990 levels by 2050. This process is underpinned in law through carbon budgets prepared under the Climate Change Act 2008. The UK is committed to sourcing 15% of its total energy (across the combined sectors of transport, electricity and heat) from renewable sources by 2020 - a commitment set out in the 'UK Renewable Energy Strategy'[18].

4.13.5 NPS EN-1 acknowledges the contribution towards the UK's low carbon future to be made by energy efficiency. It also highlights that

[18] DECC 2009 at pg 30

decarbonisation will require a significant electrification of a wide range of currently carbon consuming energy requirements, for example in transport, heat and manufacturing. Even with efficiency measures in place, the UK's underlying demand for electricity is predicted to double over the next 40 years as a consequence of this electrification process. The NPS concludes that '[t]o meet emissions targets, the electricity being consumed will need to be almost exclusively from low carbon sources.'[19]

4.13.6 NPS EN-1 continues to make clear that the UK Government plans to meet emissions targets by pursuing a balanced energy strategy in which renewables have a strong role to play; 'improving energy efficiency and pursuing its objectives for renewables, nuclear power and carbon capture and storage.'[20] The NPS then identifies (at paragraph 3.4.3) that 'offshore wind is expected to provide the largest single contribution towards the 2020 renewable energy generation targets'. A generic need for offshore wind farm development is established. Paragraph 3.4.5 makes clear that the need for new renewable generation capacity is urgent.

4.13.7 There were no representations that this strategic level identification of need was not relevant to this application or that relevant and important factors specific to this application were so substantial as to outweigh the application of this need case to the application.

4.13.8 The Panel observes that a substantial number of offshore wind energy development sites are required to meet need. The Crown Estate (through the round 3 strategic assessment) and the applicant have engaged in an objective consideration of locations at which this type of development might be delivered. The Panel accepts that these exercises have led to the identification of the Dogger Bank Teesside A&B Offshore Wind Farms as deliverable developments in principle. A national need case is set out in NPS policy and no locationally specific considerations have arisen in this examination that outweigh that need case, which is strongly supportive of the application proposal.

Site selection and alternatives

4.13.9 The site selection process for this application emerged from a Strategic Environmental Assessment (SEA), undertaken to inform the identification of sites for bidding as part of the Round 3 offshore wind farm development process by the Crown Estate, examining the potential for 25GW of additional UK offshore wind generation. This does not negate the need for a detailed project and site specific environmental assessment but is nonetheless a relevant fact that the Panel has taken into consideration because it formed the basis for the applicant's site selection. This process identified the Dogger Bank Zone as strategically supported for offshore wind farm development

[19] NPS EN-1 at paragraph 2.2.22
[20] NPS EN-1 at paragraph 2.2.23

proposals [APP-070]. The applicant made proposals for what was finally resolved as three phases of development in the zone, Dogger Bank Creyke Beck A&B, Dogger Bank Teesside A&B and Dogger Bank Teesside C&D, as described in Chapter 2 above.

4.13.10 Representations were received that raised concerns about the specific detail of siting in particular locations [REP-014, REP-038, REP-235]. These representations arose from the effects of the proposals on land and related particularly to the siting of cable alignments and the effects of construction in relation to agricultural land and garden land near Yearby and within the Wilton Complex where effects on a cracker plant operated by SABIC were a significant consideration. The compulsory acquisition dimensions of these concerns are analysed in more detail in Chapter 6 below.

4.13.11 As is made clear in NPS EN-1 at paragraph 4.4.2, applicants are obliged to include the main alternatives that they have considered, which in turn supports their justification for selecting the application site. The HRA process (considered further below in Chapter 5 of this report) requires a consideration of alternatives, as do the specific requirements of NPS EN-1 sections 5.3 (biodiversity) and 5.9 (landscape and visual) to both of which the Panel returns below in this chapter. NPS EN-1 Paragraph 4.4.2 does make clear that the consideration of alternatives must be a proportionate exercise. Relating this consideration to the analysis of need, it also makes clear that the SoS:

'should not reject an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and it should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals'.

4.13.12 There were no important and relevant matters raised in representations that the applicant had in broad and strategic terms selected the 'wrong' sites at sea, or had not considered or had given insufficient or inappropriate consideration to alternatives in its pre-application process or application documents. However, even though these issues were not raised, they are required to be examined to ensure compliance with NPS policy and the integrity of process that rely on the consideration of alternatives.

4.13.13 The ES includes a full consideration of site selection and alternatives in Chapter 6 [APP-075-082], which the Panel concludes sufficiently addresses the requirements of NPS EN-1. This is a finding that the Panel carries through to its detailed deliberations on all relevant matters, including HRA and compulsory acquisition below.

The balance of benefit and harm

4.13.14 The test in PA2008 s 104 (7) provides that the SoS must decide an application in accordance with NPS policy unless:

'the adverse impact of the proposed development would outweigh its benefits'.

4.13.15 There were two bodies which made representations that the balance between the need for the application proposals as supported in NPS policy and the adverse effects of the harm that might be done by them should be struck in favour of rejecting the application. Representations from Sembcorp and SABIC in respect of the Wilton Complex sought reassurance that cable alignments passing through this specialised industrial site and close to large petrochemical plant could be constructed and operated without a significant risk of harm to these facilities.

4.13.16 The harm suggested as arising related to:

- damage to existing Wilton Complex service infrastructure by construction works, leading to the leakage of piped materials such as saturated brine or ethane;
- lack of coordination between the applicant's proposed works and works to Wilton Complex plant;
- effects (arising from compulsory acquisition) on the interplay of existing rights enabling companies within the Wilton Complex to share infrastructure and products; and
- obstruction of access, particularly to a steam cracker and to a laydown area intended to be used for the upgrade of the cracker, a major project in its own right.
- The effects of these harms could include significant environmental and/or economic damages including pollution incidents, plant shut downs with consequential economic and employment losses and, due to increased uncertainty, investment decisions that lead to either delayed implementation or higher project costs.

4.13.17 In circumstances where the risk of such harm could not be adequately controlled, Sembcorp and SABIC submitted that the consequential prospects of harm to society, the economy and / or the environment were potentially of such seriousness that the application proposals should not proceed. The applicant took the view that this case could not be made out and that the balance of benefit favoured the grant of the application as submitted.

4.13.18 The Panel has carefully considered the balance to be struck here, as the matters of concern to Sembcorp and SABIC are ones that it considers to be of significant weight. The Panel considers that applicants proposed powers in Part 5 of the DCO, (powers if acquisition) in addition to Part 3 powers over street works if unalloyed would damage the future economic prospects of the Wilton Complex.

4.13.19 Equally, the Panel considers that the protective provisions proposed by Sembcorp and SABIC to be included in Schedule 8 Part 6 of the DCO, if left unalloyed would damage the deliverability and commercial viability of the project. However, as set out above, the Panel takes the view that the potential harm done can be sufficiently mitigated, as long as there are appropriately crafted protective provisions in place. The compulsory acquisition implications of this are set out in Chapter 6 below. The amendments to Schedule 8 Part 6 necessary to achieve an appropriate planning balance are discussed further in Chapter 7.

4.13.20 In relation to other issues:

- the relationship of the proposed development to sea uses, the inshore and offshore fishing industries;
- the achievement of grid connections;
- whether the proposal represents good design;
- effects on biodiversity, ecology and the natural environment;
- construction, operation and decommissioning effects at sea;
- construction, operation and decommissioning effects on land;
- social and economic effects at sea;
- social and economic effects on land;
- historic environment effects; and
- seascape, landscape and visual effects;

the Panel notes that there were few matters raised by interested parties and affected persons. Similarly the Panel found that there are few impact considerations of any weight. On balance, none indicate against the grant of the Order by the Secretary of State.

4.13.21 In relation to these remaining issues, the Panel concludes that the DCO as recommended in Appendix A below provides sufficient mitigation to address the few issues raised.

Conclusions

4.13.22 The Panel concludes that the need case for the application is supported by NPS policy. It has not been challenged in representations in a way that would entitle the Panel to recommend against the application. The site selection process was compliant with NPS policy and again has not been put to challenge. The balance of benefit and harm within the Wilton Complex is significant in the Panels final recommendation but can be addressed. On that basis, the Panel concludes that the case for development is made out and therefore the issues raised can be carried forward for consideration in respect of HRA (Chapter 5), CA (Chapter 6), for detailed consideration of the DCO (Chapter 7) and to the over-arching conclusion (Chapter 8).

5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

5.0 INTRODUCTION

5.0.1 The relevant SoS is the competent authority for the purposes of the Habitats Directive and the Habitats Regulations and the Offshore Marine Regulations for applications submitted under the PA 2008 regime. This Chapter of the report sets out analysis and findings relevant to Habitats Regulations Assessment (HRA) (which takes account of equivalent requirements arising from the Offshore Marine Regulations). The findings and conclusions reported here are to assist the SoS in performing duties under the Habitats Regulations and the Offshore Marine Regulations. It sits within the context set by paragraphs Chapter 4 Part 7 above, recording effects on biodiversity, ecology and the natural environment and takes full account of the ES [APP-065 - 162]and HRA Report [APP-047 - 056] submitted with the application.

5.0.2 During the examination, the Panel issued written questions on 11 August 2014 (ExQ1) [PD-023] and 28 October 2014 (ExQ2) [PD-036]. Further rounds of written questions under Rule 17 were issued, of relevance to HRA, including a Rule 17 request dated 1 December 2014 [PD-040] to clarify SNCB (SNH) advice provided in relation to European sites and their features in Scotland, and one dated 21 January 2015 [PD-049] to clarify aspects of IPs responses to the RIES and particularly to seek further advice on Dogger Bank SCI from NE.

5.0.3 The Panel held three Issue-specific Hearings (ISH) on natural environment effects matters (including HRA): 14 October 2014 [HR-004 – HR-010]; 11 November 2014 [HR-022 – HR-025]; and 2 December 2014 [HR-035 – HR-038], all of which considered the potential impacts of the application on European sites, including marine and coastal ornithology and marine sediment ecology effects in particular.

5.0.4 The Panel has adopted a standardised procedure of drawing together all submitted evidence in respect of the HRA process into a Report on the Implications for European Sites (RIES) [PD-046]. The RIES compiles, documents and signposts information provided within the DCO application, and the information submitted throughout the examination by both the applicant and IPs up to and including Deadline VII (11 December 2014), which includes a response provided by NE [REP-453] received on 16 December 2014, which the Panel decided to accept as a document provided for Deadline VII.

5.1 RELEVANT EUROPEAN SITES AND FEATURES

5.1.1 The HRA Report [APP-047 to APP-056] identifies European sites (and their features) located within the UK or UK waters for inclusion within a screening assessment.

5.1.2 The location of the application proposal is described in Chapter 2 of this report above. It is located on the Dogger Bank, within a European site. The offshore wind farm and part of the export cable corridor is located within the SCI, as shown on the Drawing F-OFL-MA-807 showing the location of Offshore Nature Conservation Sites relate to the proposed development [REP-510]. The application proposal is not connected with or necessary to the management of nature conservation of any of the UK European Sites screened into the applicant's HRA Report [APP-049 at para 1.4.2] [REP-169 at 2.9].

5.1.3 The designations applicable to the Dogger Bank European site are that it is both a cSAC and a SCI. This status will remain until such time until the site has been formally designated as a SAC by UK Government [REP-041, footnote 2]. However, for the purpose of this report it is referred to as Dogger Bank SCI. The application proposal does not have a direct effect on any other European site.

5.1.4 The HRA Report [APP-047 to APP-056] identifies a total of 198 European sites (and their features) located within the UK or UK waters for inclusion within their screening assessment (the UK European Sites), of which the Dogger Bank SCI is included as one. The European sites included within the HRA Report are listed in the applicant's screening matrices [APP-055] and in Column 1 of the Table in Annex 1 of the RIES. The location of these UK European sites is shown on Figures 5.2 and 5.3 [APP-048]. The applicant's approach to screening and identifying relevant European sites is explained in the applicant's HRA Screening Report [APP-048]. The location of these UK European sites is shown on Figures 5.2 and 5.3 [APP-048].

5.1.5 The applicant's HRA Report also identifies potential impact on European sites in other European Economic Areas (EEA) states [APP-048]. Consideration of potential impacts on European sites in other EEA States is not addressed within this Chapter, but can be found in Chapter 4 at part 4.7.

5.1.6 The relevant SNCBs have not raised concerns or disputes in relation to the sites that have been screened into the applicant's HRA, nor have they identified any additional sites that the applicant has failed to consider within their screening assessment. Clarification was sought via a Rule 17 request dated 1 December 2014 [PD-040], regarding SNH's position on the applicant's screening assessment, following SNH's response to ExQ1 No 2.4 [REP-196]. In response, SNH and Marine Scotland confirmed that in their opinion no additional SPAs in Scotland required further consideration [REP-401, Rule 17-4].

5.1.7 Confirmation was provided by NE [REP-132] [items 4-G-1, 4-G-2, 5-G-1 and 5-G-2, REP-079] and RSPB [REP-085] that the applicant had correctly identified the designation for each European site considered within its HRA. However, during the examination, NE referred to concerns raised by the North York Moors National Park Authority (NYMNPA) that populations of golden plover recorded at the landfall location for the proposed development may include birds that also

form part of the interest features of the North York Moors SPA [REP-286, Annex B].

5.1.8 In response to NE's advice [REP-149 and REP-310], the applicant confirmed that as the SPA is located approximately 7km to the south of the proposed onshore cable corridor, the onshore works were not Likely Significant Effect (LSE) upon the North York Moors SPA [REP-347]. NE confirmed that this was sufficient to address its remaining concerns in relation to the North York Moors SPA [REP-448]. The applicant and NYMNPA also agreed a SoCG submitted at Deadline III, which confirmed that NYMNPA accepts that the birds associated with North York Moors SPA will not be subject to any LSE from the Teesside application [REP-250].

5.1.9 The Whale and Dolphin Conservation (WDC) only queried the consideration of features in relation to the Dogger Bank SCI, as harbour porpoise could be a qualifying feature of the UK portion of Dogger Bank in the future [REP-130 and REP-302]. The Wildlife Trusts (TWT) also raised the same point [REP-292]. As recorded in the applicant's IfAA Report, the Dogger Bank SCI does not include harbour porpoise as a qualifying feature even though this species is present, and therefore harbour porpoise does not need to be assessed as part of the HRA process for the Dogger Bank SCI [REP-049]. This position was also confirmed by NE [REP-132]. NE/JNCC has raised no concerns over the applicant's assessment of harbour porpoise in terms of HRA at any designated site within the UK.

5.1.10 Whilst the applicant concluded no adverse effect on integrity (AEoI) in relation to all European sites where a LSE was identified, both alone and in combination with other plans and projects, the applicant's conclusion of no AEoI was disputed in relation to 6 European sites by NE [REP-132], SNH [REP-196], and RSPB [REP-085 and REP-166]. These 6 sites became the focus of the examination in relation to HRA matters and are presented in matrix form in Annex 3 to the RIES and discussed in detail below in Section 5.9 of this report. These 6 sites are identified in Column 5 of the Table in Annex 1 of the RIES and listed below:

- Dogger Bank SCI;
- Flamborough Head and Bempton Cliffs SPA;
- Flamborough and Filey Coast pSPA;
- Farne Islands SPA;
- Forth Islands SPA; and
- Fowlsheugh SPA.

5.2 THE REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES

5.2.1 The applicant's HRA Report [APP-048 to APP-056] has been augmented by a substantial volume of relevant material, including written representations from the applicant and IPs, statements of common ground, oral summaries from issue specific hearings (ISH) and answers to the Panel's questions. Those documents that are

relevant to the positions recorded in the RIES (essentially all HRA-relevant material submitted to the Panel before the issue of the RIES on 19 December 2014 [PD-047]) are recorded in paragraph 1.6 (from pages 2 - 8) of the RIES, using the citation system from the examination document library in Appendix B to this report. The Panel has taken all of the documents cited in the RIES into account. The RIES itself may be accessed at Appendix C of this report.

5.2.2 The RIES may be relied on by the SoS for the purposes of Regulation 61(3) of the Habitats Regulations and Regulation 25 of the Offshore Marine Regulations. Consultation on the RIES was undertaken late in the examination - between 19 December 2014 and 19 January 2015, to ensure that IPs were conscious of the widest possible range of evidence and changes that had been made since the start of the examination.

5.2.3 The Panel has taken account of all documentation raising HRA-relevant submissions submitted subsequently to the publication of the RIES, in particular, comments on the RIES provided at Deadline VIII (19 January 2015), responses to the Rule 17 issued on 21 January 2015 [PD-049] provided at Deadline IX (27 January 2015) and the comments on the responses provided at Deadline X (2 February 2015). This documentation is cited individually in the following paragraphs as required.

5.2.4 The RIES does not present individual matrices for each UK European site identified in the applicant's HRA Report. This is due to the large number of UK European Sites within scope and the fact that the applicant's conclusion of no LSE in relation to certain sites, was not disputed and that the applicant's conclusion of No AEoI for the majority of sites, was also not disputed. Therefore, matrices were only presented in the RIES for the European sites where the applicant's HRA conclusion of no AEoI was disputed during the examination. The full list of sites is not repeated here, as it is considered unnecessary to recite the list of sites in respect of which there is no disagreement at all with the applicant's HRA conclusion of either no LSE or no AEoI.

5.2.5 The UK European Sites considered within the applicant's HRA process are set out in the table in Annex 1 of the RIES which records in summary:

- Sites that were screened into the applicant’s assessment (the UK European Sites) (listed in Column 1)
- Those sites from Column 1 for which the applicant identified no LSEs (listed in Column 2)
- Those sites from Column 1 for which the applicant identified LSEs (listed in Column 3)
- those sites in respect of which the applicant's conclusions of no AEoI were not disputed (listed in Column 4); and
- those sites in respect of which the applicant's conclusions of no AEoI were disputed(listed in Column 5).

5.2.6 The purpose of displaying the results of the applicant's assessment and comments raised on the applicant's HRA conclusions in this format, was to enable IPs and other persons involved in the examination to identify and to either agree or disagree with these statements, based on the information provided during the examination up to Deadline VII (11 December 2015).

5.2.7 During the examination, certain IPs were involved in the HRA discussions, these include the statutory nature conservation bodies (SNCBs): Natural England (NE), the Joint Nature Conservation Committee (JNCC), the Marine Management Organisation (MMO), Natural Resources Wales (NRW) and Scottish Natural Heritage (SNH); and Non-Governmental Organisations such as the Royal Society for the Protection for Birds (RSPB), The Wildlife Trusts (TWT) and Whale and Dolphin Conservation (WDC).

5.2.8 In relation to JNCC, NE confirmed that pursuant to an authorisation made on the 9th December 2013 by the JNCC under paragraph 17(c) of Schedule 4 to the Natural Environment and Rural Communities Act 2006, NE is authorised to exercise the JNCC's functions as a statutory consultee in respect of applications for offshore renewable energy installations in offshore waters (0-200nm) adjacent to England. However, JNCC retains responsibility as the statutory advisors for European Protected sites that are located outside the territorial sea and UK internal waters, in this instance the Dogger Bank SCI, and as such continues to provide advice to NE on the significance of any potential impacts on interest features of that site [REP-132]. The MMO confirmed to the Panel that they would defer to NE in relation to impacts on designated sites [REP-267 and HR-005] and NRW informed the Panel that they have not raised any concerns in relation to potential impacts to the Welsh environment (terrestrial or marine) and therefore NRW has no comments to make on the application proposal [REP-126].

5.3 THE REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES: MATTERS ARISING FROM COMMENTS AND QUESTIONS

5.3.1 This part of Chapter 5 sets out a considered evaluation of the representations and evidence, in the light of RIES consultation responses. It addresses general submissions in relation to the RIES and then specific issues identified.

5.3.2 The following bodies submitted responses to the RIES and on HRA relevant topics subsequent to the RIES, including the Rule 17 issued by the Panel on 21 January 2015 [PD-049]:

- The applicant [REP-470];
- Royal Society for the Protection of Birds (RSPB) [REP-460] [REP-484];
- Natural England (NE) [REP-462][REP-485]; and
- The Wildlife Trusts (TWT) [REP-464][REP-534].

These submissions made following the RIES identified both general and site-specific considerations that are addressed below.

General responses

5.3.3 Clarification was provided by the applicant on typographical errors contained within the applicant's comments on the RIES [REP-502, R17-17]. Clarification was provided by NE on comments raised in relation to RIES Annex 3, Stage 2, Matrix 2 (Farne Islands SPA matrix) in relation to assessment of impacts on Atlantic puffin and Common guillemot [REP-485, R17-21].

5.3.4 The RSPB response to the RIES [REP-460] expressed a general concern about the appropriate avoidance rate for the Northern Gannet, a matter that is responded to in site specific terms below, where Northern Gannet is a qualifying feature.

5.3.5 Natural England (NE) made a response to the RIES [REP-462] where it stated (at paragraph 3):

'Natural England highlights the importance of amending the current version of the RIES due to the number of suggested amendments to ensure accurate representation of our position and would welcome sight of the final amended version. There is concern that should the current version of the RIES remain unchanged in the public forum, the fundamental errors in the representation of our position could open potential channels for legal challenge by third parties.'

5.3.6 The Panel notes this position and also makes clear that NE's comments have been taken into account in its reasoning recorded in this chapter. It did not accept the invitation to issue a corrected RIES. The RIES is a factual record for consultation, which can be relied on by the SoS for the purposes of Regulation 61(3) of the Habitats Regulations and Regulation 25 of the Offshore Marine Regulations and so the RIES is not revised following consultation. No conclusions are drawn in the RIES. The consultation responses are taken fully into account by the Panel as part of this report.

5.3.7 For the avoidance of doubt, in all instances where NE has sought to clarify its own position by submitting refinements to the words recording it in the RIES [REP-462], the Panel accepts the revised position statements set out by NE in that representation and has factored this in to its deliberations.

5.3.8 TWTs response to the RIES [REP-464] raised a general concern that case law on Article 6(3) of the Habitats Directive establishes that the grant of a fishing licence constitutes a 'plan or project' within the meaning of Article 6(3). They expressed concern that NE had commenced the examination advocating this position, but had stepped back from it in oral examination. Their position was reinforced further in a final submission on the same topic [REP-534]. The RSPB supported TWTs position [REP-484]. This concern has a practical application in respect of Dogger Bank SCI, where existing fishing is a

substantial contributor to the current unfavourable conservation status of the site, but had been considered as part of the environmental baseline by the applicant, rather than as a plan or project. It is considered there as a site specific issue when considering effects on integrity of the Dogger bank SCI (section 5.7 of this report).

Site Specific responses

5.3.9 Site Specific responses were received in respect of the following 6 sites:

- ***Dogger Bank SCI*** - when considering effects on site integrity from the application proposal alone in section 5.9 of this report, consideration is given to the clarification provide by NE in relation to the conditions which need to be secured through the DCO/DML to conclude no AEoI. This includes the updates provide by NE and MMO on the applicant's Disposal Scenario Statement and disposal site allocation. When considering effects on site integrity from other plans and projects in combination with the application proposal in section 5.9 of this report, as noted above consideration of fishing as a plan or project is considered as a site specific issue when considering effects on the integrity of the SCI. Consideration is also given in section 5.9 to the responses by NE and the MMO in relation to the Cygnus field application and the aggregate extraction areas 466/1 and 485/1 and 485/2 when considering in combination effects on the SCI.
- ***Flamborough Head and Bempton Cliffs SPA*** - no site specific issues were raised following the issue of the RIES.
- ***Flamborough and Filey Coast pSPA*** - no site specific issues were raised following the issue of the RIES.
- ***Farne Islands SPA*** - Clarification was provided by NE on comments raised in relation to RIES Annex 3, Stage 2, Matrix 2 (Farne Islands SPA matrix) in relation to assessment of impacts on Atlantic puffin and Common guillemot [REP-485, R17-21].
- ***Forth Islands SPA*** - no site specific issues were raised following the issue of the RIES.
- ***Fowlsheugh SPA*** - no site specific issues were raised following the issue of the RIES.

5.4 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT ALONE AND IN COMBINATION

5.4.1 The applicant's screening assessment is presented in the applicant's HRA Report [APP-047, in particular Appendix A [APP-048], Appendix C [APP-050] and Appendix G [APP-054]] and the applicant's screening matrices for these sites [APP-055], which considers effects from the project alone and in combination. The relevant European sites and qualifying features have been discussed above in section 5.3 of this report.

In-Combination Effects: Relevant 'Other Plans and Projects'

5.4.2 The main in-combination effects emerging from offshore wind farm projects and proposals relate to the effects of an application proposal in combination with other offshore plans and projects on mobile species and dynamic processes.

5.4.3 The applicant identified the following offshore wind farm proposed projects for in combination assessment purposes:

- Beatrice;
- Blyth Demonstration Site (NaREC) [21];
- Breeveertien II (Netherlands);
- Dogger Bank Creyke Beck A & B;
- Dogger Bank Teesside C & D;
- Dudgeon;
- East Anglia ONE;
- East Anglia THREE;
- East Anglia FOUR;
- European Offshore Wind Development Centre (EOWDC) / Aberdeen Offshore Wind Farm;
- Firth of Forth Alpha;
- Firth of Forth Bravo;
- Galloper;
- Greater Gabbard;
- Gunfleet Sands I and II[4];
- Hornsea Project One;
- Hornsea Project Two;
- Humber Gateway;
- Inch Cape;
- Kentish Flats Extension[4];
- Lincs;
- London Array II;
- Lynn and Inner Dowsing[4];
- Moray Firth (Telford, Stevenson and MacColl Offshore Wind Farm);
- Navitus Bay[22];
- Neath na Gaoithe;
- Bürger-windpark Butendiek (Germany);
- Race Bank;
- Scroby Sands[4];
- Sheringham Shoal;

[21] Table 3 of annex 2 to the applicant's SoCG with Natural England (NE) [REP-080], lists Blyth, Gunfleet Sands, Kentish Flats, Lynn and Inner Dowsing and Scroby Sands as projects excluded from the in combination assessment. NE defines the list of projects to be considered in Tiers 1-5 at paragraph of their relevant representation [REP-041]. However, as part of their Deadline IV submission, the applicant submitted updated in combination assessment tables [REP-228] which included these projects.

[22] Not included as part of the applicant's IfAA Report (APP-049), but paragraph 1.1.3 of the applicant's updated in combination assessment tables submitted as Appendix 25 of their Deadline IV submission (REP-228) refers to the inclusion of the "Navitus Bay project, the application for which was submitted post Dogger Bank Teesside A & B and for which information on impacts such as collision mortality are now available".

- Teesside Offshore Wind Farm;
- Thanet;
- Triton Knoll; and
- Westermost Rough

5.4.4 In addition to offshore wind farm proposals, the following particular plans, projects and proposals from beyond the offshore wind sector[23] were identified for in-combination assessment purposes:

Aggregate Extraction Areas[24]

- Areas 400 and 439 (Hanson Aggregates Marine Ltd);
- Areas 448 (now 514/1), 449 (now 514/3), 454 (now 512) and 466/1 (Cemex UK Marine Ltd);
- Areas 483 and 484 (DEME Building Materials UK Ltd);
- Areas 485/1 and 485/2 (Cemex UK Marine Ltd);
- Area 492 (Hanson Aggregates Marine Ltd);
- Areas 493 and 494 (Tarmac Marine Dredging Ltd); and
- Areas 495/1 and 495/2 (Hanson Aggregates Marine Ltd).

Cables and Pipelines

- Breagh Pipeline;
- Dudgeon R2 cable connection[25];
- Galloper cable connection [8];
- Greater Gabbard cable connection [8];
- Humber Gateway cable connection [8];
- Kentish Flats Extension cable connection [8];
- Lincs cable connection [8];
- London Array II cable connection [8];
- R3 wind farm projects (east coast, phase 1) cable connection [8];
- Race Bank cable connection [8];
- Scottish Territorial water sites (east coast) cable connection [8];
- Teesside Offshore Wind Farm cable connection [8];
- Triton Knoll cable connection [8]; and
- Westermost Rough cable connection [8].

Oil and Gas Facilities

- Cygnus Gas Field Development (Alpha and Bravo Projects);
- Ensign; and
- Rochelle.

[23] This analysis includes some projects consequential on offshore wind farm development, specifically offshore transmission connections that are or are proposed to be operated by and OFTO rather than by a generation undertaker.

[24] In addition to the aggregate extraction areas listed, Area 506 (DEME Building Materials UK Ltd) was included within the Panel's RIES as a site relevant to in-combination assessment. However, this site was screened out of the applicant's in combination assessment and it has not been suggested that that was in error. On that basis, whilst it has been considered by the Panel, it is not included in this list.

[25] These cable connection projects associated with offshore wind energy projects are not listed in Table 3.7 in the applicant's IfAA Report [APP-049], but are listed in Table 7.12 (projects screened in to the in-combination assessment for marine mammals (grey seal and harbour porpoise)), separately from the associated wind farms.

Tidal Projects

- Cantick Head; and
- Westray South.

Wave Energy Projects

- Brough Head (Aquamarine Power);
- Costa Head; and
- Inner Sound.

5.4.5 The projects included in the applicant's in combination assessment were disputed by NE who highlighted concerns in their written representations surrounding the exclusion from the in combination assessment of those wind farms that were commissioned and operational before the start of bird monitoring for Dogger Bank Teesside A and B, referred to as 'Tier 1' projects, which were included in the baseline rather than the cumulative assessment. [REP-132, Annex E].

5.4.6 By the examination close, NE had agreed with the applicant's position that operational wind farms included in the baseline, 'collisions at all of these sites are negligible and their inclusion would not affect the outcome of the CIA [cumulative impact assessment]' [REP-206]. On this basis, the Panel finds that the individual assessment of additional operational offshore wind farms (their removal from the baseline) would not materially adversely affect the assessed level of in combination impact. Therefore, it is not necessary to make a formal determination as to the appropriate methodological approach in this case, as to do so would not change the outcome of the assessment.

5.4.7 Mention must also be made of fishing activities. The application proposal is located within Dogger Bank SCI (referred to further in section 5.9 below). Representations by NE, The TWT and RSPB raised concerns that existing fishing activities affect the conservation status of the SCI. TWT and RSPB were also concerned that the application proposal should be assessed in combination with existing fishing activities, rather than on-going fishing activities being assumed into the environmental baseline for the applicant's ES and HRA Report.

5.4.8 With the exception of the concerns in relation to fishing activities on the Dogger Bank SCI and NE's concerns about Tier 1 wind farm projects recorded above, there were no other concerns raised to the extent that additional projects and proposals should have been screened in to the in combination assessment process, or that projects and proposals that had been screened in should be screened out.

5.5 FINDINGS IN RELATION TO SCREENING

5.5.1 The applicant screened a total of 198 European sites located within the UK into their HRA assessment [see Column 1 of Table in Annex 1 of the RIES]. Of these sites, the applicant concluded that there would be no LSE on 41 European sites and their qualifying features [see Column 2 of the Table in Annex 1 of the RIES]. The information on which the

applicant concluded no LSE for these sites is presented in the applicant's HRA Report [APP-047, in particular Appendix A [APP-048], Appendix C [APP-050] and Appendix G [APP-054]] and the applicant's screening matrices for these sites [APP-055], The IPs did not dispute the applicant's conclusion of no LSE on these 41 European sites and their qualifying features during the examination.

5.5.2 Having questioned relevant IPs on their conclusions, the Panel relies on the information provided by the applicant and finds that there would be no LSE on the 41 European sites identified in Column 2 of the Table in Annex 1 of the RIES and their qualifying features. The Panel recommends that the SoS can conclude no LSE on these sites based on the information provided in the applicant's HRA Report [APP-047, in particular Appendix A [APP-048], Appendix C [APP-050] and Appendix G [APP-054]] and the applicant's screening matrices for these sites [APP-055].

5.6 ASSESSMENT OF ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

5.6.1 The applicant identified the potential for likely significant effects on 157 European sites [paragraph 8.3.18 of APP-048]. These 157 sites are listed in Column 3 in the Table in Annex 1 of the RIES and were therefore taken forward by the applicant to an assessment of adverse effects on site integrity as a result of the project. The IPs did not dispute the applicant's screening conclusion of potential for likely significant effects for any of these 157 European sites and their qualifying features during the examination. The potential implications for these 157 European sites are considered below in view of their conservation objectives.

Conservation Objectives

5.6.2 The conservation objectives for the European sites within the UK taken forward to consideration of adverse effects on site integrity are presented in sections 4.2, 5.2 and 6.8 of the applicant's Information to inform an Appropriate Assessment (IfAA) Report [APP-049]:

- Section 4.2 presents conservation objectives for SAC Annex I Designated Habitats and supporting habitats of SPAs as listed in Table 4.1 of APP-049, including the Dogger Bank SCI at paragraph 4.2.2;
- Section 5.2 presents conservation objectives for Annex II Designated Species (and their Sites as listed in Table 5.1 of APP-049); and
- Section 6.8 (paragraph 6.8.6) of APP-049 states "In order to deal with the large number of features and SPAs requiring assessment, a generic set of conservation objectives that typically apply to the feature types (i.e. Article 4.1 or Article 4.2 populations) have been used as a reference against which to determine whether an adverse effect on integrity may arise". The generic conservation objectives are then listed. Site specific

conservation objectives for five SPA sites (including those where the applicant's conclusion of no AEOI is disputed) are not provided.

5.6.3 NE also provided the conservation objectives for the three European sites which NE had raised representations on during the examination: the Dogger Bank SCI, the Farne Island SPA, Flamborough and Filey Coast pSPA [Section 5, REP-448]. NE clarified that on the basis of approval from the Minister for the Defra, NE initiated a formal consultation on the extension of the Flamborough and Bempton Cliff SPA, which became renamed Flamborough and Filey Coast potential SPA (pSPA) [paragraph 5.9, Section 5, REP-448]. The conservation objectives are not yet available for the pSPA [Section 5, REP-448], but draft conservation objectives have been provided [REP-132, Annex E].

5.6.4 The RIES includes links to the conservation objectives for Flambrough Head and Bempton Cliffs SPA, Forth Islands SPA and Fowlsheugh SPA [PD-046, paragraph 4.10].

The applicant's integrity assessment

5.6.5 The applicant's integrity assessment is presented in the HRA Report [APP-047, in particular Appendix B [APP-049], Appendix F [APP-053]] and the applicant's integrity matrices for these sites [APP-056], which considers effects from the project alone and in combination. The applicant provided revised HRA integrity matrices at Deadline VI for the European sites carried forward to an assessment of adverse effects on site integrity [REP-357 & REP-360].

5.6.6 The applicant concluded that the project would not adversely affect the integrity of any of the 157 European sites carried forward to an assessment of adverse effects on site integrity. IPs agreed with the applicant's conclusion for 151 of these European sites, which are listed in Column 4 of the Table in Annex 1 of the RIES. This agreement is reflected in NE's written representations (REP-132) and SoCG (REP-079), and RSPB's response to ExQ1 (REP-166) and SoCG (REP-085). SNH's position is set out in their response to ExQ1 [REP-196] and their correspondence with the applicant [REP-239]. In response to the Panel's Rule 17 request on 1 December 2014 [PD-040], SNH confirmed that their advice provided at Deadline V [REP-239] still applies, which advises that the proposed Teesside application is likely to kill a very small number of gannets, kittiwakes and puffins and well short of the mortality required for Teesside to have a LSE on Scottish SPA populations.

5.6.7 However, 6 European sites were disputed by NE [REP-132], SNH [REP-196], and RSPB [REP-085 and REP-166]. These are identified in Column 5 of the Table in Annex 1 of the RIES and listed below:

- Dogger Bank SCI;
- Flamborough Head and Bempton Cliffs SPA;
- Flamborough and Filey Coast pSPA;

- Farne Islands SPA;
- Forth Islands SPA; and
- Fowlsheugh SPA.

5.6.8 These 6 sites became the focus of the examination in relation to HRA matters and are presented in matrix form in Annex 3 to the RIES and discussed in detail below in Section 5.9 of this report. The applicant provided revised matrices for these 6 disputed European sites at Deadline VII [REP-408].

5.6.9 The qualifying features of the 6 disputed European sites as identified by the applicant are listed below. With the exception of Dogger Bank SCI (which is comprised of one qualifying feature), not all qualifying features of the identified SPAs and pSPA above were disputed by the IPs. The features that were disputed during the examination are marked with an asterisk '*'.

Dogger Bank SCI

- Sandbanks which are slightly covered by sea water all the time*

Flamborough Head and Bempton Cliffs SPA

- Black legged kittiwake (breeding)*

- Breeding seabird assemblage including:
- Northern gannet*
- Common guillemot*
- Razorbill*
- Puffin*
- Herring gull
- Fulmar

5.6.10 The applicant screened out the potential for likely significant effects on herring gull [see APP-048 and APP-055]. This conclusion was not disputed by the IPs. The applicant's conclusion regarding fulmar, which were also not disputed during the examination, is presented in the applicant's HRA Report Appendix B Information for Appropriate Assessment Report [APP-049] and HRA Report Appendix I Integrity Matrices [APP-056]. The disputed features are presented in matrix form in Annex 3 to the RIES [Stage 2, Matrix 4] and discussed in Section 5.9 below.

Flamborough and Filey Coast pSPA

- Black-legged kittiwake (breeding)*
- Fulmar
- Northern gannet*
- Puffin*
- Common guillemot*
- Razorbill*
- Herring gull

5.6.11 The applicant screened out the potential for likely significant effects on herring gull [see APP-048 and APP-055]. This conclusion was not disputed by the IPs. The applicant's conclusion regarding fulmar, which was not disputed during the examination, are presented in the applicant's HRA Report Appendix B Information for Appropriate Assessment Report [APP-049] and HRA Report Appendix I Integrity Matrices [APP-056]. The disputed features are presented in matrix form in Annex 3 to the RIES (Stage 2, Matrix 3) and discussed further in Section 5.9 below.

Farne Islands SPA

- Arctic tern (breeding)
- Puffin (breeding)*
- Common guillemot (breeding)*
- Common tern (breeding)
- Roseate tern (breeding)
- Sandwich tern (breeding)
- Breeding seabird assemblage including:
- Black-legged kittiwake*
- Cormorant
- Shag
- Razorbill*

5.6.12 The applicant screened out the potential for likely significant effects on Arctic tern, Common tern, Roseate tern, Sandwich tern, Cormorant, and Shag [see APP-048 and APP-055]. This conclusion was not disputed by the IPs. The disputed features are presented in matrix form in Annex 3 to the RIES (Stage 2, Matrix 2) and discussed further in Section 5.9 below.

5.6.13 Razorbill, as part of the breeding seabird assemblage of the SPA, was considered by the applicant in their HRA. However, Razorbill is not a qualifying feature of the Farne Islands SPA, as confirmed by NE [REP-462, Table 2] in their response to the Annex A of the RIES cover letter [PD-047].

Forth Islands SPA

- Arctic tern (breeding)
- Puffin (breeding)*
- Common tern (breeding)
- Shag (breeding)
- Lesser black-backed gull (breeding)
- Northern gannet (breeding)*
- Roseate tern (breeding)
- Sandwich tern (breeding)

- Breeding seabird assemblage including:
- Black-legged kittiwake*
- Common guillemot*
- Cormorant

- Herring gull
- Fulmar
- Razorbill*

5.6.14 The applicant screened out the potential for likely significant effects on Arctic tern, Common tern, Shag, Roseate tern, Sandwich tern, and the seabird assemblage species Cormorant and Herring gull [see APP-048 and APP-055]. This conclusion was not disputed by the IPs. Whilst Lesser black-backed gull and fulmar were carried forward into the applicant's assessment of adverse effects on integrity [REP-408] , these species were not disputed by the IPs and therefore, have not been presented in matrix form in Annex 3 to the RIES (Stage 2, Matrix 5).. Therefore, only the disputed features are presented in matrix form in Annex 3 to the RIES (Stage 2, Matrix 5) and discussed further in Section 5.9 below.

Fowlsheugh SPA

- Black-legged kittiwake (breeding)*
- Guillemot (breeding)

- Breeding seabird assemblage including:
- Herring gull
- Fulmar
- Razorbill

5.6.15 The applicant screened out the potential for likely significant effects on assemblage [see APP-048 and APP-055]. This conclusion was not disputed by the IPs. The disputed features are discussed further in Section 5.9 below.

5.7 FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

5.7.1 The list of 151 European sites for which the applicant's conclusion of no AEoI was not disputed is presented in Column 4 of the Table in Annex 1 in the RIES. The Panel notes that no IPs disputed the information on which the applicant's HRA reached the conclusion of No AEoI for these sites. Therefore, the Panel relies on the information provided by the applicant and finds that no AEoI can be concluded in relation to the qualifying features of the European sites listed in Column 4 of the Table in Annex 1 in the RIES.

5.7.2 The Panel recommends that the SoS can conclude no AEoI on these 151 European sites and qualifying features based on the integrity information provided in the applicant's HRA Report [HRA Report [APP-047, in particular Appendix B [APP-049], Appendix F [APP-053]] and the applicant's revised integrity matrices for these sites [REP-357 & REP-360], which considers effects from the project alone and in combination.

5.7.3 The list of 6 European sites for which the applicant's conclusion of no AEoI was disputed is presented in Column 5 of the Table in Annex 1 in

the RIES. The Panel notes that with the exception of Dogger Bank SCI (which is comprised of one qualifying feature), not all qualifying features of the SPAs and pSPA listed in Column 5 of the Table in Annex 1 of the RIES were disputed by the IPs, as identified above in section 5.6 of this report. Therefore, the Panel relies on the information provided by the applicant in relation to the non-disputed qualifying features of these SPA and pSPA sites and finds that no AEoI can be concluded in relation to these non-disputed qualifying features of the European sites identified above in section 5.8 of this report for the sites listed in Column 5 of Table in Annex 1 of the RIES.

5.7.4 The Panel therefore recommends that the SoS can conclude no AEoI for these non-disputed qualifying features of these sites based on the integrity information provided in the applicant's HRA Report [HRA Report [APP-047, in particular Appendix B [APP-049], Appendix F [APP-053]] and the applicant's revised integrity matrices for these sites [REP-408], which considers effects from the project alone and in combination.

5.7.5 Column 5 in the Table of Annex 1 of the RIES lists the 6 European sites where the applicant's conclusion of no AEoI was disputed in relation to certain qualifying features of the SPA and pSPA, with the exception of Dogger Bank SCI where the only qualifying feature was disputed, as discussed above in section 5.6 of this report. The information provided during the examination in relation to the assessment of effects on these qualifying features of the 6 European sites where the applicant's conclusion of no AEoI was disputed, is now considered to determine if no AEoI can now be concluded for these qualifying features.

Dogger Bank SCI

5.7.6 Dogger Bank is a large sub-littoral sandbank located in the North Sea. The Dogger Bank SCI represents a portion of the total Dogger Bank physical feature, which also extends beyond UK waters. The SCI has a total area of 12,331 km² and constitutes a large proportion of the UK sandbank resource. The sole qualifying feature of the Dogger Bank SCI is as follows:

- Sand banks which are slightly covered by sea water all the time.

5.7.7 A large part of the southern area of the Dogger Bank is covered by sea water with a maximum depth rarely reaching more than 20m. As reported in Chapters 2 and 4 of this report, this forms part of a paleo-landscape, having been inundated by the sea only relatively recently in geological time, as a consequence of sea level rise and related events at the end of the last ice age. The SCI is considered to be in unfavourable condition, primarily due to the impacts of fishing activity. The conservation objective for this SCI is to restore the favourable condition of the site. Whilst NE have advised that fisheries management measures are being developed for the SCI and also for the contiguous European member states' SCIs [Section1.3, REP-449],

at present the existing fishing activity is continuing in a manner that harms the achievement of the conservation objective for the site.

5.7.8 When considering the effects of the application proposal individually on site integrity of the SCI, NE advises that "the scale of the potential impacts are different between the two windfarms that form the 'project' [this is assumed to mean Dogger Bank Teesside A and B], but based on the further information provided by the applicant we do not believe that these are significantly different to separate out advice between windfarm A and B" (paragraph 1.4.8, Section 1.4, Annex A, REP-449). On this basis, the Panel has considered the effects of the proposed development as a single project, rather than as two separate wind farms.

5.7.9 The applicant's conclusions on the integrity of the SCI with respect to the achievement of its conservation objectives for the application in combination with other projects are presented in the applicant's HRA Report [Section 7.3 in Appendix B [(APP-049]]. The applicant's final position records that the applicant has concluded no AEoI on the SCI from the Teesside project alone and in combination as the conservation objective to restore the sandbank feature of the SCI would not be compromised as the fundamental processes that maintain the ecological function of the site are localised to the immediate area of the project infrastructure and that significant impacts at the scale of the SCI would not arise [REP-405].

5.7.10 The implications for the SCI from the project alone and in combination with other plans and projects is considered further below, identifying the position recorded in the RIES and any subsequent comments provided by IPs in terms of:

- The project alone (with and without mitigation);
- The project alone plus Dogger Bank Creyke Beck and Cygnus Field Development;
- The project alone, Dogger Bank Creyke Beck and Cygnus Field Development, plus other anthropogenic activities (aggregate extraction);
- The project alone, Dogger Bank Creyke Beck, Cygnus Field, other anthropogenic activities (aggregate extraction), plus Dogger Bank Teesside C and D;
- Decommissioning (in combination); and
- Fishing as a plan or project.

The project alone (with and without mitigation)

5.7.11 The RIES records that AEoI can be excluded for the effects of application proposal alone with mitigation on the integrity of the SCI during the construction and operational phases. NE agrees with this position "based upon the agreement with the applicant to remove all infrastructure at the time of decommissioning, which would allow continued wholeness and soundness of the constitutive characteristic of the site" [paragraph 1.4.42, Section 1.4, Annex A, REP-449]. This

wording reflects the reference by NE and JNCC to the CJEU Sweetman Judgment and the CJEU's reference to the Advocate General's Opinion, which talks about "the notion of integrity which is understood as the 'continued wholeness and soundness of the constitutive characteristics of the site concerned'" (paragraph 1.4.2, Section 1.4, Annex A of [REP-449]).

5.7.12 NE's Final Integrity Position Statement for the SCI (Section 1.4, Annex A, [REP-449]), identifies the qualifications that NE considers the Panel and the SoS need to be aware of when considering the conclusion of no AEoI on site integrity from the application proposal alone, on the basis that the impacts of the project constitutes "a lasting but reparable disturbance" [paragraph 1.4.8, REP-449]. NE's advice on the effect of the application alone, with mitigation, on the conservation objective attributes of the SCI, explains that on the understanding that the effects of the project on the conservation attributes of the SCI would be "temporary with recovery of ecology occurring within months/few years after decommissioning, therefore allowing recovery to favourable conservation status to occur'" [REP-449, Annex A, Section 1.4]. This is summarised by NE as impacts that "may be considered 'Lasting (for the duration of the project), but temporary (reparable effect)'" [paragraph 1.4.4, Section 1.4, Annex A of REP-449].

5.7.13 This position was developed in the NE response to the RIES [REP-485] where it observed that "[t]he decommissioning of Teesside A and B has the potential to result in a range of impacts on the SCI. Natural England accepts that these impacts are likely to be temporary and of a lesser magnitude than the impacts of construction and operation. Therefore, in line with our position on the site integrity of the Dogger Bank SCI, we can exclude an AEOI from decommissioning activities for the project alone."

5.7.14 NE and JNCC's conclusion is based on the removal of all infrastructure and mitigation measures required in relation to potential creation of disposal mounds to remove any adverse effect, being secured through conditions within the DMLs, including a Disposal Scenario Statement. The applicant in response to concerns identified by NE and the Panel's Rule 17 request [PD- 049, R17-16] provided an updated Disposal Scenario Statement [REP-489], which notes that should the applicant wish to apply seabed preparation to substrates other than sand waves or sand wave like features, the potential for management measures will be reviewed by NE on a case-by-case basis. This is secured through the construction method statement, which will detail the disposal arrangements prior to construction (DMLs 1&2 condition 16(1)(c)).

5.7.15 In relation to drilling disposal locations, the MMO require that DML 1 and DML 2 (Schedule 7, Part 1B, Work No 2T article (4) etc.) clearly states that disposal will only take place within the array boundaries, as defined by the co-ordinates given in Schedule 7, Part 1A, Work No 1A (a) (i.e. co-ordinates for the array) [REP-486]. The MMO has issued

the applicant with disposal site allocation reference numbers of DG030 (Dogger Bank Teesside Bank A) and DG025 (Dogger Bank Teesside B) [REP-486]. The MMO also require that any reference to disposal activities to be undertaken within the array boundaries should be removed from DMLs 3 and 4 as no dredge or disposal activities are to be undertaken for the installation of transmission assets [REP-486].

5.7.16 The Panel does not view this last submission from the MMO as being necessary to respond to the impact of the application proposal on the Dogger Bank SCI. In reaching this conclusion, it notes that NE has not requested this and that the MMO throughout the examination has deferred to NE on matters relevant to the natural environment and HRA. The Panel notes that the disposal would relate to the installation of collector platform foundations and, whilst these assets are part of the transmission elements of the application proposal in eventual ownership terms, they will be physically located within the array areas and will not change the assessment of the effects of the application proposal on the Dogger Bank SCI.

5.7.17 The entire delivery of the application proposal within the Dogger Bank SCI must ensure the temporary and recoverable nature of the development in order to ensure no AEoI on the SCI from the project alone. This is provided for in:

- DCO requirements 3 -12 (detailed offshore design parameters and layout rules) and associated documents confine the physical works within SCI to the Rochdale Envelope assessed and the ES and responded to in the HRA Report and ensures that the final design and location of these are all recorded.
- DML 1 and 2 conditions 3 -12 (detailed offshore design parameters and layout rules) 14 (chemicals, drilling and debris - together with the disposal scenario statement) and 16 (pre-construction plans and documentation) achieve the same end.

5.7.18 The key provision in relation to decommissioning itself is DCO requirement 15, together with the Outline Decommissioning Statement, which ensures that before offshore works commence, a written decommissioning programme pursuant to s105(2) of the Energy Act 2004 must have been served on the SoS. The Outline Decommissioning Statement identifies that a response to the Dogger Bank SCI will form part of this programme, but it should be noted that it will also be subject to a separate EIA and HRA process.

5.7.19 On this basis, the Panel therefore recommends that the SoS is entitled to conclude that for the project alone and subject to the construction of the application proposal as provided for in the DCO / DMLs and the delivery of the requirement 15 decommissioning programme, there is no AEoI in view of that site's conservation objectives for the construction, operation and decommissioning phases, as the effects of the project would result in a 'Lasting (for the duration of the project), but temporary (reparable effect)', which would not affect the integrity

of the SCI or prevent the SCI from achieving favourable conservation status.

The project alone plus Dogger Bank Creyke Beck and Cygnus Field Development

5.7.20 The RIES records that AEoI can be excluded for the effects of the application proposal in combination with Creyke Beck A and B and the Cygnus field development during the construction and operational phases. In response to the Panel's query [PD-047], NE confirmed that the Cygnus field development is the same as the Cygnus gas field development (Alpha and Bravo), identified in Table 3.7 in the applicant's list of projects and activities considered within the applicant's in combination assessment for European sites and their relevant features ([APP-049]) [REP-462, Table 2, paragraph 2.5].

5.7.21 The effect on site integrity from the application proposal in combination with the Creyke Beck A and B development and Cygnus field developments is considered in NE's Final Integrity Position Statement for the SCI [Section 1.5, Annex A, REP-449]. NE advised the Panel that the Cygnus development has received consent [REP-462, Table 2, paragraph 2.6]. Whilst NE suggested that the Panel may wish to seek further information from DECC about the Cygnus field development, the Panel did not consider that any further information was required from DECC on the basis that the application has now been determined and NE had concluded in their consideration of the in combination assessment for the SCI that including the Cygnus development there was no AEoI based on the mitigation measures identified by NE [Section 1.5, Annex A, REP-449]. NE confirmed that it was content with this position [REP-485, R17-22].

5.7.22 On this basis, the Panel observes that mitigation secured as outlined in paragraphs 5.7.11-19 above will also be sufficient to ensure no AEoI in combination with Creyke Beck A and B and the Cygnus field development for the construction, operational and (subject to requirement 15 and the separate Energy Act 2004 process) decommissioning phases.

5.7.23 Taken together, these measures will ensure no AEoI in combination with Creyke Beck A and B and the Cygnus field development for the construction and operational phases, as these developments in combination would not affect the integrity of the SCI or prevent the SCI from achieving favourable conservation status.

The project alone, Dogger Bank Creyke Beck, Cygnus Field plus other anthropogenic activities (aggregate extraction)

5.7.24 The RIES records that AEoI cannot be excluded for the effects of Teesside A and B in combination with all other anthropogenic activities, including Creyke Beck A and B, Cygnus field development and aggregate industries, in particular aggregate extraction at areas 466 and 485 1&2 (excluding Dogger Bank Teesside C & D), during the

construction and operational phases. NE has advised the Panel that aggregate extraction areas 466 and 485 1&2 are the same as area 466/1 and areas 485/1 and 485/2, identified in Table 3.7 in the applicant's list of projects and activities considered within the applicant's in-combination assessment for European sites and their relevant features [APP-049] [REP-462, Table 2, paragraph 2.4].

5.7.25 The effect on site integrity from the Dogger Bank Teesside A and B projects in combination with aggregate activities (excluding Dogger Bank Teesside C & D) is considered in NE's Final Integrity Position Statement for the SCI, which explains that effects on the physical structure associated with the removal of material through aggregate extraction within the Dogger Bank SCI at licence areas 466/1 and 485/1 and 585/2 are considered to be lasting and would result in irreparable loss with limited ability for recovery due to the limited sediment transport within the site, as Dogger Bank is a glacial relict feature rather than an active sandbank system and is thought to function as a closed system, with little or no transport of sediment into or out of the bank [Section 1.6, Annex A, REP-449].

5.7.26 NE and JNCC advised at Deadline VII that "In summary the nature of the aggregate extraction application (as it stands) will result in an irreparable loss of structure and therefore JNCC are advising that it cannot be said beyond reasonable scientific doubt there will be no adverse effect on integrity. In comparison we believe the anticipated effects from the Dogger Bank Teesside A and B projects are lasting, but reparable allowing the site to recover at the time of decommissioning because the volume of the sandbank will not have altered" [paragraph 1.6.6.1, Section 1.6, Annex A, REP-449]. NE and JNCC's concerns regarding thresholds for the degree of effect that would constitute an adverse effect on site integrity are explained in NE's Final Site Integrity Position Statement for the SCI [in particular, paragraphs 1.6.6.2 to 1.6.6.3, REP-449].

5.7.27 In response to the Panel's query [PD-047], NE have advised that Aggregate extraction at area 466/1 and areas 485/1 and 485/2 is yet to be consented but Environmental Statements for both areas have been submitted to the MMO and have gone out for consultation. NE note that 'In relation to both areas JNCC advised that the proposed activities had a likely significant effect on Dogger Bank SCI and advised the MMO that an Appropriate Assessment would be required' [REP-462, Table 2, paragraph 2.6]. NE explained that 'JNCC's advice was based on a consideration of the combined impacts of the aforementioned aggregates projects alone (i.e. in combination with each other but not in combination with other non-aggregates projects). JNCC advised that it was not possible to conclude beyond all reasonable scientific doubt that aggregate extraction at area 466 and areas 485 1 & 2 would not result in an adverse effect on site integrity" [REP-462, Table 2, paragraph 2.6].

5.7.28 In response to the Panel's Rule 17 [PD-049], the MMO confirmed that they were currently considering a marine licence application for

aggregate extraction Area 466/1 and advised that a LSE test had not yet been conducted for this licence application. The MMO was not able to provide the Panel with any timeframes for the determination of the marine licence application [REP-486, R17-23]. The MMO also advised that it was currently in pre-application discussions with the relevant applicants regarding aggregate extraction at areas 485/1 and 485/2. The MMO advised the Panel that no further comment could be made at during the examination regarding the likelihood and timing of any future marine licence applications for these areas [REP-486, R17-23]. The MMO confirmed that should marine licence applications for aggregate extraction areas 485/1 and 485/2 be submitted, then a decision will be made as to whether an AA will be required.

5.7.29 The applicant does not agree with NE's conclusions of not being able to conclude beyond reasonable scientific doubt no AEoI on integrity for the in combination assessment, which includes aggregates projects [paragraph 1.3.70, REP-405]. The applicant's explanation for this disagreement with NE and JNCC's conclusion is that the applicant asserts that the effects on the SCI from the aggregate extractions are different from the effects from Teesside in combination with other plans and projects, as "The aggregate extraction applications (as they stand) would prevent recovery due to loss of sandbank structure. This permanent loss of feature can[sic] be compared to the long-term but reparable disturbance anticipated for the Dogger Bank Teesside A and B project, Dogger Bank Creyke Beck, Dogger Bank Teesside C & D projects and the Cygnus Field development, which should allow recovery of the site at the time of decommissioning as the composition volume of sandbank will subsequently not have altered" [paragraph 1.3.72, REP-405].

5.7.30 NE advised the Panel during the examination that "provided that the appropriate mitigation is secured for Dogger Bank Teesside A and B, the biggest contribution to an in-combination adverse impact to site integrity comes from the aggregate extraction plans within the Dogger Bank SCI. As the major contributor to the in-combination impact on the Dogger Bank SCI, Natural England believes the onus is on the Aggregates project to adopt mitigation and compensatory measures to reduce the adverse effect on integrity down to an acceptable level or provide appropriate compensation" [paragraph 1.20, Section 1, REP-448]. This advice is reflected in the information provided about IROPI and Compensatory Measures under Article 6.4 of the Habitats Directive, provided by NE [Section 1.7, Annex A, REP-449].

5.7.31 The Panel has carefully considered the timing and potential impacts of the aggregate extraction areas but is persuaded by the difference between the potential impacts associated with the aggregate extraction compared with the long term but repairable disturbance anticipated for Dogger Bank Teesside and NE's advice that the biggest contribution to an in combination adverse impact to site integrity on the SCI would come from the aggregate extraction plans and therefore that the onus is on the Aggregates project to adopt mitigation and compensatory measures if required.

5.7.32 An important consideration in the Panel's mind is the matter of timing and sequence of consent and development. Given the findings above in relation to in combination effects excluding aggregate extraction at area 466/1 and areas 485/1 and 485/2, if the application proposal were to be developed before the aggregates areas are consented, it would be for EIA, HRA, project design and the consent process for the aggregates areas to address a baseline that would need to include a developed Dogger Bank Teesside A and B. Scale is also relevant, in that the aggregates proposals appear likely to give rise to effects of a substantial scale larger than those arising from the application proposal. It would be normal in such circumstances for the later and more substantial proposal (the aggregates proposal) to take whatr would become the earlier project (Dogger Bank Teesside A and B) into account.

5.7.33 Further, the effects of the aggregate proposals are not yet certain, in the sense that licence applications had not been submitted at the end of the examination and therefore no decision had been made on the HRA process for these proposals. In these circumstances, it appears appropriate in the Panel's mind to recommend that the SoS should address the application in hand, and find that it will be for the aggregates applicants in due course to address the in combination issues that arise. The SoS is recommended to consult with the MMO prior to a decision to enable a decision to be made in the light of progress on the aggregates applications at that time..

5.7.34 On this basis, the Panel concludes that for the project with the identified mitigation secured through the DCO/DML secured as outlined in paragraphs 5.7.11-19 above, in combination with all other anthropogenic activities, including Creyke Beck A and B, Cygnus field development and aggregate industries, in particular aggregate extraction at area 466/1 and areas 485/1 and 485/2 (excluding Dogger Bank Teesside C & D), there is no AEoI in view of the site's conservation objectives, for the construction and operational phases.

The project alone, Dogger Bank Creyke Beck, Cygnus Field, other anthropogenic activities (esp aggregate extraction), plus Dogger Bank Teesside C and D

5.7.35 The RIES records that AEoI cannot be excluded for the effects of Teesside in combination with all other anthropogenic activities, including Creyke Beck A and B, Cygnus field development and aggregate industries, in particular aggregate extraction at area 466/1 and areas 485/1 and 485/2 and Dogger Bank Teesside C & D, during the construction and operational phases.

5.7.36 The effect on site integrity from Dogger Bank Teesside in combination with anthropogenic activities, including Dogger Bank Teesside C & D is considered in NE's Final Integrity Position Statement for the SCI [Section 1.8, Annex A, REP-449]. NE advises that "Whilst Natural England and JNCC acknowledge that in principle the applicant commits to the decommissioning of Teesside C & D projects, the data required

to inform the assessment and scale of any impacts and subsequent mitigation measures are currently unavailable" [, paragraph 1.8.1, Section 1.8, Annex A, , REP-449]. NE advised at Deadline VII that "Therefore with the addition of this project to those already included in the in-combination assessment Natural England and JNCC cannot advise beyond reasonable scientific doubt that there would be no adverse effect of integrity to the Dogger Bank SCI when considering the Dogger Bank Teesside A and B projects in combination with oil and gas industry development, aggregate extraction areas and Dogger Bank C & D projects" [paragraph 1.8.1, Section 1.8, Annex A, REP-449].

5.7.37 The applicant does not agree with NE's conclusions of not being able to conclude beyond reasonable scientific doubt no adverse effect on integrity for the in combination assessment, which includes Dogger Bank C & D and aggregates projects [paragraph 1.3.70, REP-405]. The applicant's explanation for this disagreement with NE and JNCC's conclusion is that "Forewind considers that development within the Dogger Bank Teesside C & D project areas would lead to potential impacts similar to those that have been assessed for Dogger Bank Teesside A and B and Dogger Bank Creyke Beck. Design, layout, installation techniques and requirements / methods for scour and cable protection for the Dogger Bank Teesside C & D project will be similar to those that have already been advanced and assessed for the Dogger Bank Teesside A and B project. Given similar substrate conditions, installation methods and approaches to the removal of seabed infrastructure, as advanced for Dogger Bank Teesside A and B, Forewind would also commit to removing installed infrastructure of the Dogger Bank Teesside C & D project, when this project is developed further. As such, impacts associated with Teesside C & D would be of a similar long-term, but temporary, nature and full recovery of affected areas would be expected. Thus, the conservation objective to restore the sandbank feature of the SCI would not be compromised" (paragraph 1.3.71, REP-405). The applicant's consideration of the effect that the inclusion of Dogger Bank Teesside C & D would have on the in combination assessment for the application is provided in the applicant's SCI Position Statement [REP-405, paragraphs 1.3.9].

5.7.38 The Panel having carefully considered the information presented during the examination, is persuaded that based on the information currently available, it cannot exclude adverse effect on the site's integrity. On this basis, the Panel finds for the project in combination with all other anthropogenic activities, including Creyke Beck A and B, Cygnus field development and aggregate industries, in particular aggregate extraction at areas 466/1 and 485/1 and 485/2 and Dogger Bank Teesside C & D, a possible AEoI in view of that site's conservation objectives, for the construction and operational phases.

5.7.39 However, turning to effects of this position for this decision, the Panel again notes that the later proposal (Dogger Bank Teesside C & D) to take the earlier proposal (Dogger Bank A and B) into account. It notes that there is as yet no application under PA2008 for Dogger

Bank Teesside C & . It is not the appointed Examining Authority for that project. It has not seen environmental information in respect of it. It would be most inappropriate the Panel to act in a way that would fetter the discretion of the SoS in respect of a future application for Dogger Bank Teesside C & D. In short, it will be for the Examining Authority and then the SoS at the time that application is made (assuming that it is) to examine and then make that assessment. It follows that the Panel finds no reason arises from this consideration for it to recommend any further change to the application proposal.

Decommissioning in combination

5.7.40 When commenting on the RIES, the applicant confirmed that it is the applicant's view that the application will not have an adverse effect on the site integrity of the Dogger Bank SCI alone, and in-combination, during decommissioning [REP-470, comment 13]. NE when commenting on the RIES advised the Panel that "In regards to in-combination effects, Natural England considers that the decommissioning elements of the applicant's assessment are as complete as they can be at this time. However, the magnitude of in-combination effects will be dependent on other plans or projects at the time of decommissioning." Therefore, NE cannot conclude beyond all reasonable scientific doubt that operations associated with decommissioning of Dogger Bank Teesside A and B in-combination with other plans and projects will not result in an adverse effect on the integrity of the site. It cannot exclude AEoI in-combination until a full pre-decommissioning EIA is undertaken and any potential in-combination impacts have been assessed through the Habitats Regulations process [REP-462, Table 2, paragraph 1.6]. The Panel notes that this is standard advice which is given by NE to all NSIP projects.

5.7.41 On this basis the Panel recommends that for the project in combination with other plans and projects, the SoS can conclude there is no AEoI in view of that site's conservation objectives, for the decommissioning phase, bearing in mind the consideration of decommissioning above.

Consideration of fishing as a plan or project

5.7.42 In terms of fishing effects on the SCI, NE has advised that the Dogger Bank SCI is considered to be in unfavourable condition, primarily due to the impacts of fishing activity. Whilst NE have advised that fisheries management measures are being developed for the SCI and also for the contiguous European member states' SCIs [REP-449, Section1.3], at present the existing fishing activity is harming the achievement of the conservation objective for the site. Information about the proposed management of fishing activity in the SCI is provided in NE's Final Integrity Position Statement for the SCI and is stated to include "an agreed updated position between Natural England and JNCC on the consideration of fisheries, which now reflects the position of the MMO" [paragraph 1.1.5, Annex A, REP-449].

5.7.43 Information on the characterisation of fishing (trawl) impacts on the SCI has been provided by NE [Section 4, REP-310]. The applicant agrees with NE's position with respect to the overwhelming contribution of fishing activities to the unfavourable conservation status of the SCI and that the effects of the Teesside project need to be considered in the context of the proposed fisheries management measures [REP-218].

5.7.44 During the course of the examination, NE initially advised the Panel that "recent guidance from Defra has indicated that fishing activity should be considered as if it were a plan or project" (paragraph 1.3.4, Annex D, [REP-132])[26]. NE confirmed to the Panel that NE "considers fisheries as a plan or project and that it should be included within the applicant's in combination HRA assessment" [paragraph 1.7, Section 1, REP-286].

5.7.45 NE subsequently advised the Panel that on-going fisheries activities should not be considered a plan/project unless they are a new activity [paragraph 3.17, Section 3, REP-310]. This is a change in position from NE's advice previously provided for the Dogger Bank Creyke Beck examination [footnote 19, paragraph 3.17, section 3, REP-310]. NE confirmed Defra indicated that only new fishing activities should be considered as a plan or project [paragraph 1.21, Section 1, REP-448] [REP-449].

5.7.46 The applicant's view, having undertaken a review of the relevant legislation and policy, is that "fishing on the Dogger Bank is not a defined activity, and nor is it a consented or specifically regulated activity, which makes the concept of a meaningful assessment impossible since it has no definable scope and is not monitored. In turn this means that such fishing cannot be considered as a plan or a project for the purposes of the Directive or the Regulations and it should not form part of an in-combination assessment" [REP-240].

5.7.47 The applicant acknowledges that "Although the [Defra] policy statement refers to the conservation of European Marine Sites outside of 12 nautical miles, which would include the Dogger Bank SCI, the policy recognises that legislative measures would first need to be proposed by the European Commission in accordance with the Common Fisheries Policy before any such management measures could be adopted in respect of the offshore marine area. Therefore, despite there being an aspiration for the protection measures proposed for the management of inshore fisheries to be applied to offshore fishing activities there is currently no such policy in place" [REP-240, paragraph 1.3.2]and the 'inshore approach' described in the Defra policy statement cannot be extended to fishing activities outside 12nm [REP-240]. On this basis, the applicant has concluded that "As offshore fishing activities on the Dogger Bank are not considered a

[26] Information provided by NE on the Defra document relevant to the status of fishing as a plan or project is provided in Section 8 of [REP-286], which includes a link to the Defra document at paragraph 8.4.

plan or a project for the purposes of the Directive or the potential policy position there is no basis for such to have formed part of the in-combination assessment" (paragraph 1.3.4, REP-240).

5.7.48 TWTs in response to the RIES [REP-464], repeated their concern about the change in position taken by NE towards consideration of fishing as a plan or project [REP-400] and referred to case law on Article 6(3) of the Habitats Directive, which in their view had established that the grant of a fishing licence constitutes a 'plan or project' within the meaning of Article 6(3) and consideration of fishing activities beyond 6nm. TWTs' final submission reinforced their position [REP-534]. The RSPB supported TWTs' position [REP-484].

5.7.49 In response to the Panel's Rule 17 request [PD-049], NE explained that on-going and new activities are considered through different provisions of the Directive, (6(2) and 6(3)/6(4) respectively). NE explained that within 12nm a regulatory mechanism is available, outside 12nm, there is an absence of any regulatory mechanism through which fishing activities are controlled. On this basis, NE explained that whilst it may be possible to extend the approach taken to assessment of fishing activities within 12nm to outside 12nm, due to the absence of a mechanism, NE and MMO agreed that such an approach may be premature [REP-485, R17-9].

5.7.50 NE advise that on this basis and "given the fishery activity is on-going and is responsible for the site's unfavourable condition, we consider that the on-going activity should be used to contextualise the additional effects of the windfarm" [REP-485, R17-9]. NE disagree that its recommended position that on-going fishing activities do not need to be assessed as a plan or project, does not mean that fishing is treated as part of the baseline. Instead, "it is that the magnitude of the effects of the on-going fishery activity [that] have been considered alongside the effects of the windfarm and (subject to strong DML conditions and mitigation being implemented) [and] it is considered that the windfarm effects will not impact upon the trajectory of recovery as and when fishery management measures are adopted" [REP-485, R17-9].

5.7.51 In response TWT stated that "Whilst we accept that Article 6(2), 6(3) and 6(4) have different scopes, we do not believe that this is adequate justification for treating on-going and new fisheries differently in regards to an in-combination assessment" [REP- 534]. TWT referred to their previous comments, in particular their interpretation of the Advocate-General's Opinion in Waddenzee [REP-464]. In addition TWT comments that "Although a more complicated process beyond 12nm, the legal obligations with respect to the regulation of fishing activities under Article 6 of the Habitats Directive apply throughout the UK's EEZ, and not just within 12nm. Therefore, the basic duty of the UK to assess fisheries as a plan or project in any in combination assessment still applies in this situation, regardless of the 'logic' of doing so" [REP-534].

5.7.52 TWT agrees with NE that the on-going fishing activity is known to be responsible for the site's unfavourable condition and that this should be considered alongside the effects of the wind farm. However, TWT questions how this can be done without a full in-combination assessment and whether the integrity test for the SCI has been fully implemented [REP-534].

5.7.53 The Panel notes Defra's "Revised Approach to the Management of Commercial Fisheries in European Marine Sites - Overarching Policy and Delivery Document" (January 2013) outlines the Department's overarching policy approach and key implementation steps to ensure that all existing and potential commercial fishing operations are managed in accordance with Article 6 of the Habitats Directive. The revised approach applies to all European Marine Sites (EMS) and potential Special Protection Areas (pSPAs) and possible Special Areas of Conservation (pSACs) in England.

5.7.54 The document has no statutory weight, but recommends (amongst other things) that regulatory authorities treat fishing activities as a "project or plan" which should be subject to AA before issuing site level permits for fishing activities. As the document explains "Government and Fishery Regulators in England (primarily the Marine Management Organisation (MMO) and Inshore Fisheries and Conservation Authorities (IFCAs)) have legal obligations to ensure that fishing activities (including existing fishing activities), which could adversely affect EMSs, are managed in a manner that secures compliance with the requirements of Article 6 of the EU Habitats Directive" [REP-286, paragraph 8.4 and paragraph 3 of the Defra Policy Statement]. The Defra document states that "EMS outside 12nm will require legislative measures to be proposed by the European Commission in accordance with the [Common Fishery Policy] to ensure adequate protection. For these sites, the Department, taking account of any relevant guidance, intends to submit proposals to the European Commission for any fishery measures needed to ensure site protection is consistent with Article 6 of the Habitats Directive, so that appropriate Regulations are in place in 2016" [REP-286, paragraph 8.4 and paragraph 13 of the Defra Guidance].

5.7.55 The Panel also notes NE's statement that whilst there is a regulatory mechanism available within 12nm, under which potentially damaging on-going operations will be considered through a re-permitting process, outside 12nm there is an absence of any regulatory mechanism through which fishing activities are controlled. On this basis, the Panel has some sympathy with the applicant's view that despite there being an aspiration for the protection measures proposed for the management of inshore fisheries to be applied to offshore fishing activities there is currently no such policy in place and as fishing on the Dogger Bank is not a defined activity, and nor is it a consented or specifically regulated activity, it makes the concept of a meaningful assessment impossible since it has no definable scope and is not monitored [REP-240].

5.7.56 The Panel has considered the advice provided by NE that on this basis and the contribution made by on-going fishing activities to the SCI's unfavourable condition, on-going fisheries activities should not be considered a plan/project unless they are a new activity. The Panel also notes no 'new' fishing activities have been included in the list of other plans and projects considered in the applicant's in combination assessment, summarised in the Table in Annex 2 of the RIES and that, no interested party has identified any 'new' fishing activities which should be considered as a 'plan or project' in the in combination assessment for the SCI. When commenting on the RIES no IPs challenged this statement or identified any specific 'new' fishing activities. In this context, the Panel considers that the SoS does not therefore need to consider the in combination effects of any new fishing activities on the SCI and can conclude no AEoI.

5.7.57 The Panel has also considered the advice provided by NE that a HRA for a plan or project should consider human/on-going activities and their implications to the conservation objective attributes of a protected site. The applicant's HRA incorporates fishing activity as part of the baseline to reach the applicant's conclusion of no AEoI for the SCI for the project alone and in combination with other plans and projects. Whilst the Panel notes the concerns raised by TWT and RSPB regarding NE's recommended approach to consideration of on-going fishing activities, the Panel has had regard to the advice provided by NE that the magnitude of the effects of the on-going fishery activity have been considered alongside the effects of the application proposal and that, subject to agreed DML conditions and mitigation being implemented, NE consider that the effects of the application proposal will not impact upon the trajectory of recovery as and when fishery management measures are adopted [REP-485, R17-9]. In this context, the Panel considers that the effects of the application proposal have been considered against the on-going fishing activity and the implication of the application proposal to the conservation objective attributes of the SCI and therefore the SoS does not need to consider the in combination effects of on-going fishing activity and can conclude no AEoI.

5.7.58 However, in the event that the SoS takes a different view and proposes to treat on-going fishing activities as a 'plan or project' the effects of which should be considered in combination, the Panel considers, having regard to the advice of NE, that it would be reasonable to conclude that on-going fishing activities at the SCI are expected to reduce. This is as a result of the proposed fisheries management measures, in accordance with the Common Fisheries Policy, reducing the overwhelming contribution of fishing activities to the unfavourable condition of the SCI. The Panel, having considered the advice of NE, also considers that it would be reasonable to conclude that fishing activities are the major source of impact on the unfavourable conservation status of the SCI. Therefore the smaller scale level of impact from the application proposal, relative to the impact due to fishing in combination, would not prevent the

achievement of the SCI's conservation objective, recovery of the sand bank feature.

Flamborough Head and Bempton Cliffs SPA

5.7.59 Flamborough Head and Bempton Cliffs SPA occupies an area of 212.17ha and is located on the Yorkshire Coast. The cliffs face into the North Sea and rise to a height of 135m at Bempton. The site supports large populations of breeding seabirds, which feed and raft in the waters around the cliffs and also further out in the North Sea. The features which were the focus of the examination for this site are::

- Black legged kittiwake (breeding)
- Breeding seabird assemblage including:
- Northern gannet
- Common guillemot
- Razorbill
- Puffin

5.7.60 The Panel notes that the current Natura 2000 form for Flamborough Head and Bempton Cliffs SPA (dated 1993) includes black-legged kittiwake as the only qualifying feature of the SPA. The UK SPA review (dated 2001) also includes a seabird assemblage of international importance: "The area qualifies under Article 4.2 of the Directive (79/409/EEC) by regularly supporting at least 20,000 seabirds. During the breeding season, the area regularly supports 305,784 individual seabirds including: Puffin (Fratercula arctica), Razorbill (Alca torda), Guillemot (Uria aalge), Herring Gull (Larus argentatus), Gannet (Morus bassanus), Kittiwake (Rissa tridactyla)".

5.7.61 In July 2013, NE were granted approval to begin formal consultation on an extension of the Flamborough Head and Bempton Cliffs SPA. The revised SPA is referred to as Flamborough Head and Filey Coast pSPA and is intended to include the original Flamborough Head and Bempton Cliffs SPA plus additional areas supporting seabird colonies. NE noted that until the status of the pSPA has been confirmed, it is necessary, under the Habitat Regulations, to consider both the designations of the original SPA and the new pSPA in the assessment [section 3.2 of Annex E: Expert Report on offshore ornithology [REP-132]]. The pSPA is discussed separately below. Whilst the applicant only considered Flamborough Head and Filey Coast pSPA in their HRA Report [APP-047 to APP-056], a separate integrity matrix was subsequently provided for Flamborough Head and Bempton Cliffs SPA [REP-408]. The applicant has considered both the SPA qualifying feature and the UK SPA review species. A link to the Conservation Objectives for this site is provided in paragraph4.10 of the RIES.

5.7.62 Annex 3 (Stage 2, Matrix 4) of the RIES records the relevant discussions during the examination with regard to both the SPA qualifying feature and the UK SPA review species. In relation to the qualifying feature of black-legged kittiwake, the applicant concluded no AEoI [APP-049] and NE [REP-132] and the RSPB [REP-166] did not

list black legged kittiwake as a species of concern for this site. However, a particular focus of dispute was the predicted mortality/displacement figures for guillemot and razorbill during the operation of the proposed development, both alone and in-combination with other projects. NE also raised concerns regarding the lack of consistent models and parameters applied to the modelling of effects on bird species [REP-132].

5.7.63 Following agreement between the applicant and NE , the applicant revised the apportioning approach to provide "updated in-combination tables for the key sites and species of concern identified within the HRA, and as agreed with Natural England" [REP-228]. The report also addressed NE's concerns regarding the Band model options for collision risk [REP-228, paragraph 1.1.5] and in relation to displacement and scaled mortality rates [REP-228, paragraph 1.1.6].The applicant provided a range of assessment scenarios to cover their position, as well as that advised by NE.

5.7.64 The RIES records the progression of the applicant's modelling during the examination and the production of the Biologically Defined Minimum Population Scales (BDMPS) report. The applicant's revisions in respect of species, including guillemot and razorbill, have been considered by NE [REP-462]. NE confirmed in their response to the RIES consultation [REP-462] that the revisions undertaken by the applicant allowed NE to conclude no AEoI of the Flamborough and Filey Coast pSPA which is proposed to replace the Flamborough Head and Bempton Cliffs SPA, and thus the conclusion is considered to be same for this SPA.

5.7.65 In their statement of common ground with the applicant [REP-085], RSPB highlighted concerns over “the use of Potential Biological Removal (PBR) to assess additional mortality effects on a population through collision or displacement, specifically Flamborough Head and Filey Coast pSPA/Flamborough Head and Bempton Cliffs SPA”. The RSPB stated that “the use of PBR is not appropriate and that PVA [Population Viability Analysis] should be used to assess the likely additional mortality effects arising from collision or displacement”. The applicant provided an updated position on the use of PVA and PBR at Appendix 8 of their Deadline IV submission [REP-208], concluding that “when used together, PVA and PBR are useful tools for defining thresholds but selection of appropriate model variations and inputs are important when interpreting these values” [paragraph 2.3.3, REP-208].

5.7.66 RSPB maintained their position of disagreement that displacement represents a one-off impact i.e. it should be treated as ongoing throughout the lifetime of the wind farm, and that it “strongly disagrees with the use of Potential Biological Removal (PBR) for assessment of the likely impacts of this scheme” [REP-304]. RSPB refer back to their position set out at Appendix 5 of their SoCG with the applicant [REP-085]. At Deadline VII, RSPB “maintains its position as set out in our previous representations – in particular our

Statement of Common Ground with Forewind and our response to the Examining Authority's Second Written Questions" [REP-446]. They also state that "a likely significant effect cannot be excluded for guillemot and razorbill" [REP-446], and it is assumed that this relates to all sites where these features were identified as being contentious in their statement of common ground [REP-085].

5.7.67 Following the issue of the RIES for consultation, the RSPB commented that it maintains its position as set out in previous representations [REP-460].

5.7.68 NE has clarified [REP-462] that in its view, the applicant's Deadline VII revisions allow it to advise that adverse effects on site integrity can be excluded with regard to guillemot and razorbill displacement. To the extent that this advice is from the relevant SNCB, it is entitled to be treated with considerable weight. To the extent that the RSPB does not concur with it and maintained this position after the RIES, the Panel prefers the advice of NE, noting in reaching this position that the RSPB documentation on this point is brief and not supported by underlying evidence, whereas that of NE is strongly supported. Nor, despite invitations, did the RSPB attend any hearings and enable its ornithological expertise to be tested on this point.

5.7.69 On this basis, the Panel recommends that, in line with NE (SNCB) advice, an AEoI can be excluded when considering the predicted displacement figures for razorbill and guillemot, in view of the site's conservation objective, during operation of the project. The Panel finds that no AEoI can be excluded for the qualifying feature black legged kittiwake and the other the UK SPA review species for this site, in view of the site's conservation objective, during construction, operation and decommissioning of the project.

Flamborough Head and Filey Coast pSPA

5.7.70 Flamborough Head and Filey Coast pSPA is located on the Yorkshire Coast. It is being considered as an extension to, and replacement of, the Flamborough Head and Bempton Cliffs SPA, as a way of protecting the seabird colonies that currently fall outside the SPA boundary. Thus the area that could be covered by pSPA currently includes the area of Flamborough Head and Bempton Cliffs SPA. The Flamborough Head and Filey Coast pSPA is based on a revised site boundary, revised interest features and new reference populations. The pSPA covers 8039.60 ha, of which the marine extension comprises 7471.78 ha.

5.7.71 The features which were the focus of the examination for this site are:

- Black-legged kittiwake
- Common guillemot
- Northern gannet
- Puffin
- Razorbill

5.7.72 As described above, NE was granted approval to initiate formal consultation on Flamborough Head and Filey Coast pSPA in July 2013. During the pre-application stages of the Teesside application, NE advised the applicant of the proposed alterations to the pSPA [REP-132], and these alterations have been subsequently included in the applicant's assessments. The conservation objectives are not yet available for the pSPA [Section 5, REP-448], but draft conservation objectives have been provided [REP-132, Annex E].

5.7.73 Stage 2, Matrix 3 presented in Annex 3 of the RIES records and references the disputes and agreements between the applicant and IPs during the examination in respect of pSPA. As described for Flamborough Head and Bempton Cliffs SPA above, a particular focus of dispute was the predicted mortality/displacement figures for guillemot and razorbill during the operation of the proposed development, both alone and in-combination with other projects. NE also raised concerns regarding the lack of consistent models and parameters applied to the modelling of effects on bird species [REP-132]. The species that were the focus of initial dispute are presented in Annex 3 to the RIES (Stage 2, Matrix 3).

5.7.74 During the examination, agreement was reached between the applicant and NE regarding additional information required to inform the HRA, and the applicant subsequently revised the apportioning approach in order to provide updated in-combination tables for the key sites and species of concern identified within the HRA [REP-228]. The report also addressed NE's concerns regarding the Band model options for collision risk [REP-228, paragraph 1.1.5] and in relation to displacement and scaled mortality rates [REP-228, paragraph 1.1.6]. The applicant provided a range of assessment scenarios to cover their position, as well as that advised by NE.

5.7.75 Stage 2, Matrix 3 within Annex 3 of the RIES records the progression of the applicant's modelling during the examination and the production of the BDMPS report. The applicant's revisions were reviewed by NE, who confirmed in their response to the RIES consultation [REP-462] that the revisions undertaken by the applicant allowed NE to conclude no AEoI for the Flamborough and Filey Coast pSPA.

5.7.76 During the examination, the RSPB also raised concerns regarding the applicant's use of PBR to assess additional mortality effects on a population through collision or displacement for Flamborough and Filey Coast pSPA/Flamborough Head and Bempton Cliffs SPA. The RSPB maintained their position of disagreement at Deadline VII. They also state that “a likely significant effect cannot be excluded for guillemot and razorbill” [REP-446], and it is assumed that this relates to all sites where these features were identified as being contentious in their SoCG with the applicant [REP-085]. Following the issue of the RIES for consultation, the RSPB commented that it maintains its position as set out in previous representations [REP-460].

5.7.77 NE has clarified [REP-462] that in its view, the applicant's Deadline VII revisions allow it to advise that adverse effects on site integrity can be excluded with regard to guillemot and razorbill displacement. To the extent that this advice is from the relevant SNCB, it is entitled to be treated with considerable weight. To the extent that the RSPB does not concur with it, the Panel prefers the advice of NE, noting in reaching this position that the RSPB documentation on this point is brief and not supported by underlying evidence. Nor, despite invitations, did the RSPB attend any hearings and enable its ornithological expertise to be tested on this point. The RSPB's post RIES submissions do not address it.

5.7.78 On this basis, the Panel recommends that, in line with NE (SNCB) advice, an AEoI can be excluded when considering the predicted displacement figures for razorbill and guillemot, in view of the site's conservation objective, during operation of the project. The Panel finds that no AEoI can be excluded for the proposed qualifying features for the pSPA, in view of the site's conservation objective, during construction, operation and decommissioning of the project.

Farne Islands SPA

5.7.79 The Farne Islands SPA is a collection of islands off the Northumbrian Coast. The islands are of significant importance as nesting areas for seabirds. The features which were the focus of the examination for this site are:

- Puffin (breeding)
- Common guillemot (breeding)
- Black-legged kittiwake
- Razorbill

5.7.80 The Panel notes that the current Natura 2000 form for the Farne Islands SPA (dated 1985) includes common tern, Arctic tern, and Sandwich tern as the qualifying features of the SPA. The UK SPA review (dated 2001) also includes guillemot and puffin as qualifying features, together with a seabird assemblage of international importance: "The area qualifies under Article 4.2 of the Directive (79/409/EEC) by regularly supporting at least 20,000 seabirds. During the breeding season, the area regularly supports 142,490 individual seabirds including: Kittiwake Rissa tridactyla, Shag Phalacrocorax aristotelis, Cormorant Phalacrocorax carbo, Puffin Fratercula arctica, Guillemot Uria aalge, Arctic Tern Sterna paradisaea, Common Tern Sterna hirundo, Roseate Tern Sterna dougallii, Sandwich Tern Sterna sandvicensis". The applicant considered the UK SPA Review species in addition to the qualifying species. NE's representation at Deadline VII explains the change in approach to UK SPA Review species consideration in HRA, with reference to the Farne Islands at paragraphs 5.5 to 5.8 [REP-448]. The conservation objectives for this site are provided in REP-448 (Section 5).

5.7.81 The RIES records the points raised by IPs, including NE and RSPB, in respect of this SPA and effects on those qualifying features of dispute in the Stage 2, Matrix 2 presented in Annex 3 to the RIES. The only species disputed by NE and RSPB during the examination were black-legged kittiwake, guillemot, puffin and razorbill and the RIES matrix therefore reflects this.

5.7.82 NE raised concerns during the examination regarding the lack of consistent models and parameters applied to the modelling of effects on bird species [REP-132]. Of particular discussion were the potential displacement effects of the proposed development on the puffin, guillemot and razorbill, and also mortality of kittiwake as a result of collision during the operation of the proposed development, alone and in-combination.

5.7.83 Agreement was reached between the applicant and NE regarding additional information required to inform the HRA, and the applicant subsequently revised the apportioning approach in order to provide updated in-combination tables for the key sites and species of concern identified within the HRA [REP-228]. The report also addressed NE's concerns regarding the Band model options for collision risk [REP-228, paragraph 1.1.5] and in relation to displacement and scaled mortality rates [REP-228, paragraph 1.1.6]. The applicant provided a range of assessment scenarios to cover their position, as well as that advised by NE.

5.7.84 Following receipt of the additional modelling and reporting, including the final BDMPS report, NE were able to re-confirm at Deadline VII [REP-450] that "in the case of the Farne Islands SPA these revisions [after the revised BDMPS work], being downwards make no difference to the conclusions [no AEOI] provided at Deadline V". No other points of concern were raised by IPs, including RSPB, with respect to the Farne Islands SPA.

5.7.85 The RIES summarised evidence available to the Panel at the date of its production as identifying no adverse effects on site integrity for the Farne Islands SPA. On this basis, the Panel recommends that, in line with NE (SNCB) advice, an AEoI can be excluded when considering the qualifying features and UK SPA Review species of the Farne Islands SPA, in in view of the site's conservation objective, during construction, operation and decommissioning of the project.

Forth Islands SPA

5.7.86 The Forth Islands SPA is a collection of islands home to the main seabird colonies in the Firth of Forth. The islands support important numbers of a range of breeding seabirds, in particular terns, auks and gulls. The colony of gannets is the largest on the east coast of the UK. The seabirds feed outside the SPA in nearby waters, as well as more distantly in the North Sea. The features which were the focus of the examination for this site are:

- Puffin (breeding)
- Northern gannet (breeding)
- Razorbill
- Common guillemot
- Black legged kittiwake

5.7.87 The qualifying features and breeding seabird assemblage species disputed during examination were Northern gannet, black-legged kittiwake, puffin, guillemot and razorbill. The potential effects disputed were associated with collision risk, displacement, barrier effects and in-combination effects. The points raised are discussed in detail below and are presented in Annex 3 to the RIES (Stage 2, Matrix 5).

5.7.88 In the applicant's correspondence with SNH and Marine Scotland Science [REP-239], SNH state that mortality in relation to gannets, kittiwakes and puffins associated with Teesside wind farm are "very small and well short of the mortality required for this proposal on its own to have a likely significant effect on Scottish SPA populations". This reflects SNH's previous comment that they "agree that Dogger Bank Teesside A/B [sic], considered in its own right, will not have an adverse effect on any Scottish Special Protection Areas or Special Areas of Conservation" [REP-196]. At Deadline VII in response to the ExA's request for further information under Rule 17 [PD-040], SNH state that they "have no changes to make to the advice provided at Deadline V [REP-239] at this stage...there are still large areas of uncertainty in the methodologies used and in the conclusions reached for all aspects of the impact assessment process (HRA) for mobile bird species both during and out with the breeding season. There are still ongoing discussions occurring both within the Statutory Nature Conservation Bodies (SNCBs) and between SNH and Marine Scotland – these are unlikely to conclude during the examination process for Teesside A & B" [REP-401].

5.7.89 In respect of displacement mortality, SNH did not raise any concerns in this regard. The RSPB did, however, raise this as concern and in relation to common guillemot, puffin, and razorbill [REP-166]. In RSPB's SoCG with the applicant, RSPB highlight concerns over "the use of Potential Biological Removal (PBR) to assess additional mortality effects on a population through collision or displacement" [REP-085]. The RSPB state that "the use of PBR is not appropriate and that PVA [population viability analysis] should be used to assess the likely additional mortality effects arising from collision or displacement". The applicant's and RSPB's positions are set out in Appendices 3 and 5 of REP-085 respectively. The applicant provided an updated position on the use of PVA and PBR at Appendix 8 of their Deadline IV submission [REP-208], concluding that "when used together, PVA and PBR are useful tools for defining thresholds but selection of appropriate model variations and inputs are important when interpreting these values" (REP-208, paragraph 2.3.3). RSPB maintain their position of disagreement that displacement represents a one-off impact i.e. it should be treated as ongoing throughout the lifetime of the wind farm, and that it "strongly disagrees with the use

of Potential Biological Removal (PBR) for assessment of the likely impacts of this scheme" [REP-304]. RSPB refer back to their position set out at Appendix 5 of their SoCG with the applicant [REP-085].

5.7.90 In terms of Atlantic puffin at the Forth Islands, SNH raised "impact on site integrity expected in combination due to mortality from displacement impacts in winter" as an area of concern in their response to ExQ1 no. 2.5 [REP-196]. However, SNH agree to the applicant's conclusions in terms of impacts of the project alone. They also state that "[i]n magnitude, the effects on kittwake and puffin are very small (less than 10 birds dying per year) and might be considered trivial" [REP-196].

5.7.91 The applicant's integrity matrix for the Forth Islands SPA [Matrix A55, REP-408] states that the application proposal is outside the maximum foraging range of black-legged kittiwake (230km) that could derive from the Forth Islands SPA. Apportioning of the annual collision estimate (i.e. non-breeding birds in summer and winter), attributes a collision loss of 1.07 adult black-legged kittiwakes, representing 0.01% of the SPA population [Table A9.35d in Appendix 9 of APP-094]. In total the loss of adult birds through collision at this SPA would represent an increase in the background mortality of 0.17%. In terms of black–legged kittiwake at the Forth Islands, SNH raised "expected in combination mortality arising from Collision impacts outside the breeding season" as an area of concern [REP-196]. However, SNH agree to the applicant's conclusions in terms of impacts of the project alone [REP-196, see footnote b], a position to which their conclusion cited in this paragraph above is clearly also relevant.

5.7.92 The applicant's integrity matrix for the Forth Islands SPA [Matrix A55, REP-408] states that the application proposal is not within the maximum foraging range of northern gannet (230km) that could derive from the Forth Islands SPA, however, on the basis of tagging data, it is possible that birds from this SPA may forage within the Dogger Bank Zone. Apportioning of the annual collision estimate during the breeding season attributes a collision loss of 14.1 adults representing 0.01% of the SPA population [Table A9.33d in Appendix 9 of APP-094]. For non-breeding birds (summer and winter), 20.5 birds lost through collision are attributed this SPA, representing 0.01% of the designated SPA population [Table A9.33d in Appendix 9 of APP-094 and paragraphs 6.6.109 to 6.6.112 of APP-049]. In total the loss of adult birds through collision at this SPA would represent an increase in the background mortality of 0.36%, and the applicant's view is that losses as a result of Teesside fall well below the threshold for adverse effect on integrity as informed by PVA analysis for this species [paragraphs 6.6.121 and 6.6.122 of REP-049]. In terms of northern gannet at the Forth Islands, SNH raised "expected in combination mortality arising from Collision" as an area of concern [REP-196]. However, SNH agree to the applicant's conclusions in terms of impacts of the project alone.

5.7.93 In respect on in-combination effects, the projects included in the applicant's in-combination assessment were not disputed by SNH or RSPB in any of their written submissions. However, SNH state that they "do not agree that there will be no adverse effects on Forth Islands SPA and Fowlsheugh SPA in combination with other projects" [REP-196]. In correspondence between the SNH and applicant, SNH state that "The absolute numbers of gannets, kittiwakes and puffins that the Dogger Bank Teesside A&B wind farm is likely to kill are very small and well short of the mortality required for this proposal on its own to have a likely significant effect on Scottish SPA populations. In terms of cumulative impacts the mortality from this proposal is less than 1% of the estimated effects of the three Forth and Tay wind farms. Given this difference in magnitude and the unknown but probably large amount of uncertainty associated with collision risk estimates these small additional levels of mortality are likely to be trivial but we cannot advise that for certain" [REP-239]. At Deadline VII, SNH confirmed that this advice [REP-239] still stands [REP-401] and had not been overtaken by any later analysis.

5.7.94 SNH did not provide the Panel with a response to the RIES at Deadline VIII on 19 January 2015. Nor did it make any further written representation before the end of the examination. The RSPB responded to the RIES at Deadline VIII (REP-460), stating that their position remained as per previous representations and advising that the RSPB respectfully disagrees with the applicant's suggestion that use of a 99.5% avoidance rate for northern gannet is precautionary. Instead, RSPB recommends the use of 98.9% for the non-breeding season and the use of98% avoidance rate for gannets during the breeding season [Rep-460].

5.7.95 The RIES summarised evidence available to the Panel at the date of its production as identifying no adverse effects on site integrity for the Forth Islands SPA. SNH as the SNCB has advised no AEoI for the Teesside project alone on any Scottish SPA or SAC [REP-196]. When considering the effects of the application proposal in combination, whilst SNH state that they do not agree no AEoI on the Forth Islands SPA in combination with other projects [REP-196], SNH note that in cumulative terms compared with other projects, namely the three Forth and Tay wind farms, "these small additional levels of mortality are likely to be trivial but we cannot advise that for certain" [REP-239]. SNH confirmed that this advice [REP-239] still stands [REP-401] and had not been overtaken by any later analysis.

5.7.96 To the extent that this advice is from the relevant SNCB, it is entitled to be treated with considerable weight. To the extent that the RSPB does not concur with it, the Panel prefers the advice of NE, noting in reaching this position that the RSPB documentation on this point is brief and not supported by underlying evidence. Nor, despite invitations, did the RSPB attend any hearings and enable its ornithological expertise to be tested on this point. The RSPB's post RIES submissions do not address it.

5.7.97 On this basis, the Panel recommends that, in line with SNH (SNCB) advice and on the likely "trivial" scale of effects, an AEoI can be excluded when considering the qualifying features of the Forth Islands SPA, in in view of the site's conservation objective, during construction, operation and decommissioning of the project.

Fowlsheugh SPA

5.7.98 Fowlsheugh SPA is located on the east coast of Aberdeenshire. The cliffs, reaching heights of between 30-60m are home to large numbers of breeding seabirds. The only qualifying feature disputed during the examination was the black-legged kittiwake.

5.7.99 Whilst SNH advised that they “agree that Dogger Bank Teesside A/B [sic], considered in its own right, will not have an adverse effect on any Scottish Special Protection Areas or Special Areas of Conservation” [REP-196], concerns were raised by SNH, who identified that kittiwake collision impacts outside of the breeding season as the only area of concern in relation to the applicant's conclusions at the Fowlsheugh SPA [REP-196].

5.7.100 The applicant's integrity matrix for the Forth Islands SPA [Matrix A59, REP-408] states that the Teesside project is outside the maximum known foraging range of black-legged kittiwake (230km) from the Fowlsheugh SPA. Apportioning of the annual collision estimate (i.e. non-breeding birds in summer and winter), attributes a collision loss of 2.64 adults representing 0.01% of the SPA population [Table A9.35d in Appendix 9 of APP-094]. In total the loss of adult birds through collision at this SPA would represent an increase in the background mortality of 0.17%. Although SNH stated that collision risk to kittiwakes is of concern, SNH also agreed to the applicant's conclusions in terms of impacts of the project alone and stated that “In magnitude, the effects on kittiwake and puffin are very small (less than 10 birds dying per year) and might be considered trivial” [REP-196].

5.7.101 The projects included in the applicant’s in-combination assessment were not disputed by SNH in any of their written submissions. However, SNH state that they “do not agree that there will be no adverse effects on Forth Islands SPA and Fowlsheugh SPA in combination with other projects” [REP-196]. In correspondence between the SNH and the applicant, SNH state that “The absolute numbers of gannets, kittiwakes and puffins that the Dogger Bank Teeside A&B wind farm is likely to kill are very small and well short of the mortality required for this proposal on its own to have a likely significant effect on Scottish SPA populations. In terms of cumulative impacts the mortality from this proposal is less than 1% of the estimated effects of the three Forth and Tay wind farms. Given this difference in magnitude and the unknown but probably large amount of uncertainty associated with collision risk estimates these small additional levels of mortality are likely to be trivial but we cannot advise that for certain” [REP-239].

5.7.102 SNH did not provide the Panel with a response to the RIES at Deadline VIII on 19 January 2015. Nor did they appear at any hearing or make any further written representation before the end of the examination. No other interested party has commented on this issue since the issue of the RIES.

5.7.103 The RIES summarised evidence available to the Panel at the date of its production as identifying no adverse effects on site integrity for the Fowlsheugh SPA. SNH as the SNCB has advised no AEoI for the Teesside project alone on any Scottish SPA or SAC [REP-196]. When considering the effects of the Teesside project in combination, whilst SNH state that they do not agree no AEoI on Fowlsheugh SPA in combination with other projects [REP-196], SNH note that in cumulative terms compared with other projects, namely the three Forth and Tay wind farms, "these small additional levels of mortality are likely to be trivial but we cannot advise that for certain" [REP-239]. SNH confirmed that this advice [REP-239] still stands [REP-401] and had not been overtaken by any later analysis. To the extent that this advice is from the relevant SNCB, it is entitled to be treated with considerable weight.

5.7.104 On this basis, the Panel recommends that, in line with SNH (SNCB) advice, the likely "trivial" scale of impact suggests than an AEoI can be excluded when considering the qualifying features of the Fowlsheugh SPA, in in view of the site's conservation objective, during construction, operation and decommissioning of the project.

5.8 HRA CONCLUSIONS

5.8.1 Taking all of representations provided to the Panel on HRA matters into account, the following conclusions are drawn.

5.8.2 The examination sought to establish whether the applicant had identified and included within their in combination assessment all the relevant 'other plans and projects' which may have a potential in combination effect with the application to produce LSE. NE disputed the scope of the in combination assessment [Paragraphs 3.3.33-37 REP -132] and the methodology applied to draw conclusions (see below).

5.8.3 The examination also sought to examine the effectiveness of mitigation where this has been relied upon by the applicant, as in the case of the Dogger Bank SCI, to reach a conclusion of No Adverse Effect on Integrity (No AEoI), and how it would be secured and delivered through the requirements in the DCO.

5.8.4 The applicant has undertaken an extensive, precautionary and rigorous HRA evaluation in its application documentation and has supported this by undertaking additional work requested of it during the examination. The applicant has also engaged effectively and taken careful account of advice from the SNCBs (NE and SNH). NE has substantially assisted the examination process.

5.8.5 The applicant originally identified 198 European Sites for screening purposes. Of these, 157 were taken forwards to appropriate assessment. Of these, the interested parties agreed no AEoI in relation to 151 sites and 6 were disputed in terms of the applicant's conclusions of the effects on integrity. These 6 sites are: Dogger Bank SCI; Flamborough Head and Bempton Cliffs SPA; Flamborough and Filey Coast pSPA; Farne Islands SPA; Forth Islands SPA; and Fowlsheugh SPA.

5.8.6 These 6 European Sites became the focus of the examination. Of these, the evidence available to the Panel led clearly to conclusions that there was no AEoI on three sites: Flamborough Head and Bempton Cliffs SPA; Flamborough and Filey Coast pSPA; and Farne Islands SPA (see section 5.7 above).

5.8.7 In respect of three remaining sites and their features, matters have turned on a fine evaluation of the evidence placed before the Panel.

Dogger Bank SCI

- The application proposal will not result in AEoI alone or when taken in combination with existing use and development that has been taken into account for in combination assessment purposes and in relation to construction and operation.
- In respect of decommissioning, NE has made clear that as long as the DCO secures 'a lasting (for the duration of the project), but temporary (reparable effect)' by meeting the principles set out in the Outline Decommissioning Statement (requirement 15), there will be no AEoI for the project alone. Taken in combination, an AEoI due to decommissioning cannot be excluded, but the Panel notes that this finding is based on a standard observation by NE and subject to the need for a separate decommissioning scheme that will be subject to its own EIA and HRA processes.
- These findings are dependent on the undertakers' commitment to the temporary and remediable nature of works in the SCI - and this has been secured within the DCO to the maximum extent possible, having regard to the fact a separate statutory process for decommissioning applies.
- The same conclusion cannot clearly be reached with respect to prospective development including the development of aggregate extraction at areas 466 and 485 1&2, or Dogger Bank Teesside C and D offshore wind farm. That being said, these uses are not yet consented and the Panel considers that the means by which a possible AEoI at this stage would be considered would be through the inclusion of Dogger Bank Teesside A and B project into the baseline for these projects at the point of their assessment.
- The contribution made by on-going fishing activities to the SCI's unfavourable condition is such that it would be reasonable to conclude that fishing activities are the major source of impact on the unfavourable conservation status of the SCI. Therefore, the smaller scale level of impact from the application proposal, relative to the impact due to fishing in combination, would not

prevent the achievement of the SCI's conservation objective, recovery of the sand bank feature..

Forth Islands SPA
Fowlsheugh SPA

- The likely level of impact from the proposed development on these European sites is noted as being "trivial" in respect of both European sites (SNH [REP-239]) and hence the development of the application proposal within its Rochdale Envelope is not considered to give rise to AEoI.

5.8.8 Further to the Panel's review of representations and evidence in respect of these sites and their features, it concludes that in no case will there be any AEoI, either individually or in combination, other than that which should properly be taken into account when an HRA process and an approval decision is in process for a later development.

5.8.9 In respect of all European sites, the Panel has given careful consideration to NPS EN-1 paragraph 5.3.9 and to NPS EN-3 paragraphs 2.6.58 to 2.6.71. There are no matters arising from those policies that have not been fully addressed.

5.8.10 In respect of Dogger Bank SCI the Panel has taken specific note of NPS EN-3 paragraph 2.6.69, which makes clear that the designation of a European Site does not necessarily restrict the construction or operation of an offshore wind farm in or near that site.

5.8.11 Further, having regard to the draft conclusions of the RIES together with all relevant evidence and consultation responses, the Panel finds that the integrity of the Natura 2000 network of European Sites will be maintained.

5.8.12 It follows that the Panel finds that the SoS is entitled to complete an appropriate assessment on the basis of the available evidence. It the Panel's view that, with the exception of the need to consult in respect of the progress proposals for aggregate extraction at areas 466 and 485 1&2 (essentially to ascertain that no license has been granted of which the Panel is currently unaware) no further steps in the consideration of effects on European Sites were required to be taken during the examination (such as the consideration of additional mitigations, consideration of alternatives or IROPI).

5.8.13 There is no reason arising from the consideration of effects on European Sites within the HRA process why the DCO should not be granted as recommended in this report, with the provision of relevant mitigation that is secured by requirements and DML conditions as identified above.

6 COMPULSORY ACQUISITION AND RELATED MATTERS

6.0 INTRODUCTION

6.0.1 This chapter of the report considers the effects of the application proposals in terms of the acquisition of land, interests in land and rights over land. It includes consideration of:

- the tests applicable to compulsory acquisition proposals and which the Panel has applied;
- the compulsory acquisition documentation provided by the applicant;
- the compulsory acquisition proposals made by the applicant;
- individual examination of specific proposals and objections to them;
- the provision and securing of funds for the proposed acquisitions;
- the protection of statutory undertakers and special category land under Part 7 Chapter 1 of the PA2008; and
- the position in respect of Crown Land.

It also sets out conclusions in respect of human rights and the engagement of the Human Rights Act 1998.

6.0.2 In making findings and reaching conclusions on the applicant's compulsory acquisition proposals, this chapter takes account of the Panel's examination of the application proposal as a whole, including its findings in respect of compliance with relevant NPS policy and the balance of public benefit offered by the proposal. In undertaking that exercise, it should also be recorded that the Panel has given due regard to the effects of compulsory acquisition on affected persons and communities as part of its consideration of policy compliance and the balance of benefit.

6.1 COMPULSORY ACQUISITION TESTS AND THE EXAMINATION PROCESS

6.1.1 This section summarises the tests to which an NSIP application proposing compulsory acquisition is subject and the process used by the Panel to examine the compulsory acquisition proposal.

6.1.2 Under PA2008 section 122, a DCO may only authorise compulsory acquisition if:

- the land is required for the development to which the development consent relates; or
- the land is required to facilitate or is incidental to that development; or
- the land is replacement land which is to be given in exchange for the order land under sections 131 or 132 of the Act;

and there is a compelling case in the public interest for the land to be acquired compulsorily.

6.1.3 It is for the applicant to defend and justify its proposals and to show how the above tests are satisfied for each parcel of land which it intends to acquire compulsorily.

6.1.4 The applicant should be able to show that:

- the land to be acquired is no more than is reasonably required; and
- the public benefit outweighs the private loss.

6.1.5 Paragraphs 8 to 19 of 'Planning Act 2008 - Guidance related to procedures for the compulsory acquisition of land', Department for Communities and Local Government, (September 2013) (the DCLG CA Guidance) identifies factors to be taken into account in the decision whether or not to include a provision in a DCO authorising the compulsory acquisition of land or interests in land summarised as follows:

- all reasonable alternatives to compulsory acquisition, including modifications to the project, have been explored;
- the proposed interference with the rights of those with an interest in the land is for a legitimate purpose; and necessary; and proportionate;
- the applicant must have a clear idea of how the land which is to be acquired is to be used;
- there is a reasonable prospect of the requisite funds for compulsory acquisition becoming available; and
- the purposes are sufficient to justify interfering with the human rights of those with an interest in the land affected, with reference to the relevant provisions of the European Convention on Human Rights.

6.1.6 The Panel has given consideration to all proposals for compulsory acquisition and subjected these to the relevant tests. As part of this process it has paid careful regard to the justification for compulsory acquisition of all individual plots identified in the Book of Reference and on the Land Plans, whether or not an affected person made a relevant or a written representation raising concerns about compulsory acquisition.

6.1.7 Two compulsory acquisition hearings were held at Redcar, on 13 November 2014 and 4 December 2014. Owing to several late requests to be heard by affected persons, not all these persons could be accommodated at the second hearing. However, the second hearing was reconvened and completed on 13 January 2015 and consequently all compulsory acquisition affect persons were provided with a full opportunity to be heard.

6.1.8 The examination included the holding of a strategic compulsory acquisition hearing at Redcar, at which the Panel questioned the

applicant about the need for and approach that it had taken to compulsory acquisition for the application proposals as a whole. Site specific hearings were also held, examining the effect of proposals on industrial land within the Wilton Complex and on the largely agricultural land traversed by the alignments outside the Wilton Complex. The Panel has taken all submissions and evidence arising from these hearings fully into account. The Panel has also inspected all sites subject to submissions raising concerns about compulsory acquisition.

6.2 COMPULSORY ACQUISITION DOCUMENTATION

6.2.1 This section summarises the compulsory acquisition documentation submitted with the application, in changes to the application and in documentation submitted during the examination.

6.2.2 The applicant submitted the following application documents in support of its proposals for compulsory acquisition:

- a Funding Statement [APP-030];
- a Statement of Reasons [APP-031];
- a Book of Reference [APP-032]; and
- offshore and onshore Land Plans [APP-011, 012, 026]

6.2.3 Chapters 1 and 2 of this report record changes to the application, which relate to compulsory acquisition. There were no objections submitted to the proposed changes.

6.2.4 The applicant also made incremental changes to some compulsory acquisition documentation to respond to changes in the information about land and land interests (but not to change what was applied for). At the end of the examination, the latest documents were as follows:

- the Funding Statement [REP-370];
- the Statement of Reasons [REP-367];
- the Book of Reference [REP-497, 498]; and
- offshore and onshore Land Plans [REP-513, 518 - 526].

There were no objections to these changes and the Panel recommendation is based on the latest submitted documentation.

6.3 GENERAL CONSIDERATION OF MATTERS ARISING FROM THE COMPULSORY ACQUISITION REQUEST

6.3.1 This section describes the compulsory acquisition powers sought by the applicant in general terms. It also describes elements of the applicant's approach that are specific to the application proposal including:

- the ownership structure of 'Bizcos' proposed to benefit from compulsory acquisition powers; and

- the applicant's preferred approach to commencement and the relationship between this and compulsory acquisition powers.

It sets out shared concerns raised by multiple compulsory acquisition affected persons, where common principles can be identified and applied. Section 6.4 below records the consideration given to specific issues raised in individual objections and in relation to individual sites.

6.3.2 It should be noted that the Panel commenced from the standpoint of undertaking an individual consideration of each individual objection in relation to individual sites. The reasoning recorded here took place after the individual reasoning was concluded. However, on the basis that some principles apply equally to a number of objections the Panel considered that it was most efficient to set them out here.

Compulsory acquisition powers

6.3.3 The applicant also seeks powers for the compulsory acquisition of land and rights over land to enable it to construct, operate and maintain two onshore export cable alignments, converter stations and grid connections, and to gain access to the cable alignments and compounds associated with the construction and maintenance processes.

6.3.4 The powers are framed in a manner that envisages the complete severability of the two development projects and their works. It follows that whilst the two cable alignments are physically located side by side, the land and rights sought by the applicant are such that each alignment could be constructed in parallel, at the same time, but by different entities, or could alternatively be constructed in sequence or separately with some lapse of time between two distinct construction periods. A more detailed explanation of how it is proposed that this is achieved is set out from paragraph 6.3.12 below.

6.3.5 The applicant's compulsory acquisition request relates to the acquisition of

- freehold title, where permanent control of the land is required, eg for the construction and operation of the converter stations; and
- freehold title and permanent rights and restrictive covenants, whereby following construction and reinstatement the freehold can be offered back to the landowner subject to rights and covenants being in place to allow the asset (eg the buried cable) to be protected and to be properly operated and maintained; and
- permanent rights of access for construction and maintenance; and
- temporary rights for construction purposes (eg construction compounds)

Whilst requests for temporary rights do not form part of compulsory acquisition, they were sought for related reasons. The Panel examined these requests together with the compulsory acquisition request.

6.3.6 The onshore cable routes which are the subject of the compulsory acquisition powers run side by side, south west from the landfall site between Redcar and Marske-by-the-Sea to the existing NGET substation at Lackenby, where the grid connection is proposed to be made.

6.3.7 The applicant generally seeks a 36m wide corridor for HVDC cable in trench and 39m wide for HVAC cable, including allowances for unforeseen obstacles and safety zones. Cable would be installed by cut and cover, and the land sought is sufficient to enable a construction access track/haul road and the storage of excavated material without the need for substantial volumes of this to be hauled to storage areas elsewhere.

6.3.8 The application change within the Wilton Complex, discussed in Chapter 2.2 above entails the acceptance of narrower cable corridors than those set out above. The applicant explained that these reduced working widths were necessitated by the need to construct the cable corridors within a constrained area of land south of the GrainCo land, whilst not excavating existing landscaped blast bunding covered with mature vegetation to the south. The retention of this blast bunding is important to provide visual and environmental screening for existing dwellings in the village of Lazenby, both from current plant at the Wilton Complex and from the proposed converter station site. These narrower corridors will require the haulage of excavated material for storage elsewhere.

6.3.9 Where there are physical obstructions such as watercourses, major third party utilities' crossings, road or rail crossings, existing buildings or residential garden land, horizontal directional drilling (HDD) is proposed. The HDD technique takes the cables deeper than normal to clear the obstacles. It requires the formation of pits from which to send and receive the drill and cable, and therefore requires a greater working width.

6.3.10 Negotiations with landowners started in 2012 to enable access for environmental surveys and route option development. The applicant continues to negotiate with landowners including Network Rail, NGET and Sembcorp, in order where possible to enter into private treaty arrangements. The applicant has however included compulsory acquisition powers in the Order to ensure that the project can be delivered in accordance with the planned programme, should negotiations break down or any private agreement not be honoured or fail. It is therefore necessary for the SoS to consider proposals for CA and effects on statutory undertakers (PA2008 s 127) and special category land (PA2008 s 132).

The 'Bizco' model

6.3.11 The application proposes that each offshore wind farm and the associated development necessary to support it would be delivered by

a separate legal entity, described in the application documentation as a 'Bizco'.

6.3.12 The Bizco model is explained in the Statement of Reasons [APP-031] with a commercial clarification provided at Deadline VI (20 November 2014) as requested by the Panel [REP-328]. It is also discussed in chapter 2 of this report.

6.3.13 The applicant's role is to act as agent for Bizcos 2 and 3 to secure development consent, following which the Bizcos will exercise compulsory acquisition powers, and lead investment and construction.

6.3.14 Each Bizco has been specifically established to deliver its particular project and is owned by eight participants (special purpose vehicles) equally, two for each shareholder (RWE, SSE, Statoil and Statkraft).

6.3.15 The different interests and financial capacities of the owners are actively managed by a legally binding structure covering project timetable, financial commitments, third party investment and exit strategy, the latter to place the burden on shareholders who do not wish to proceed to ensure that replacement shareholders are found.

6.3.16 No concerns were raised in respect of the effect of this particular ownership model. However, practical concerns were raised, to the extent that the division of project delivery into two phases of development for the cable corridors could result in two phases of disruption for persons affected by compulsory acquisition. Some affected persons took the view that the cable alignments could be shared to reduce the potential effects of this disruption or the amount of land required by the application proposals for the construction of onshore cable alignments.

6.3.17 In this respect, the Panel has considered the effects of the potential ownership and delivery model on IPs and affected persons. On balance, it considers that the scale of the application proposal is such that it is reasonable for the applicant to have to sought a severable approach to development. Without such an approach, it remains possible that an undertaker could not be found to develop the application proposal.

6.3.18 NPS EN-1 paragraph 5.12.8 and 9 requires the Panel to consider the economic effects of what amounts to phasing and whether any specific mitigation is required for these. The Panel has considered the effects of the proposed ownership and delivery model and considers that the public interest in ensuring that delivery is capable or proceeding is a matter of greater weight than the adverse effects of the proposed model. No mitigation appears capable of inclusion in the DCO that would address the concerns of affected persons without harming the delivery prospects of the application proposal as a whole.

Commencement

6.3.19 The applicant considers that seven years is needed for commencement rather than the standard commencement period of five years and has cited several factors in support of this element of its application [REP-331]:

- the size and technical complexity of the projects;
- limitations on supply chain capacity;
- limitations on the Contract for Difference mechanism;
- the likelihood that the A and B projects will be designed and built by different operators; and
- the time taken to secure capital for a project of this scale.

The applicant has referred to the SoS's decision in the Triton Knoll offshore wind farm application[27,28] as supporting the applicability of a seven year commencement period to a project of this type and scale.

6.3.20 Each of the two projects comprising the application would have an installed capacity of 1.2GW, that is to say 2.4GW combined. This is understood to be among the largest wind turbine generating station applications made to date and is of a similar order of scale to the Hinckley Point C nuclear generating station with an installed capacity of 3.2GW.

6.3.21 The smaller Triton Knoll offshore wind farm was recommended for a seven year commencement period by the Panel in that case on the basis of its size and technical complexity, as argued by the applicant here. Those arguments were accepted by the SoS and the made order has a seven year commencement period. However, the Triton Knoll project did not include a simultaneous consent for an onshore grid connection, nor was there any onshore compulsory acquisition associated with it as there is in this case.

6.3.22 Following the 13 January 2015 hearing, Mr Langton on behalf of the Scaife family raised a concern 'that the application to extend the effective term of the DCO to 7 years places an unnecessary period of uncertainty over their property …' [REP-481]. No other representations were made by or on behalf of other affected persons arguing against an extension from five to seven years for commencement in specific terms, although concerns were expressed by a number of affected persons about the scope provided by the draft DCO generally for extended periods of uncertainty related to compulsory acquisition.

6.3.23 The closely related Creyke Beck decision made by the SoS[29] since the closure of this examination has rejected seven year commencement

[27] Triton Knoll Panel Report at para 5.11.17
[28] The made Triton Knoll Offshore Wind Farm Order 2013 - SI No. 1734: requirement 2 (time limits) provides seven years for the commencement of development.
[29] The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 and paragraph 5.6 of the decision letter dated 17 February 2015

periods for a similar DCOs with onshore compulsory acquisition implications, on the basis that seven years is too long a period over which onshore affected persons' affairs might be exposed to uncertainty. It was not possible to refer to this decision within this examination as it had not yet been made at the time the examination closed. The applicant and the IPs / affected persons have not therefore had an opportunity to comment on the effect of these decisions.

6.3.24 In these circumstances, the Panel considered that it was not proper to analyse these decisions in this report and that it should report to the SoS on the basis of the information put to it within the duration of its examination. The Panel also concludes that, without a seven year commencement period, the undertakers will not have sufficient time to enable arrangements to be made for the commencement of the application proposal. In reaching this view, the Panel is conscious that, not only is offshore proposal of substantial scale justifying an extended commencement period for the same reasons as were applicable in the made Triton Knoll order, but the onshore proposals are also equivalently complex. Key in the Panel's mind here is the need to ensure delivery of the cable alignments within the Wilton Complex.

6.3.25 For reasons argued more fully below, the Panel has proposed that the undertakers will need to ensure that landowner consent to the operation of CA and related powers can be obtained within the Wilton Land and Wilton Complex. This will entail consideration between the applicant and Wilton operators of programmes for the development of the application proposal, alongside programmes for the maintenance and upgrading of plant at Wilton. These processes are of sufficient complexity to warrant an extended commencement period to ensure proper resolution.

6.3.26 On this basis and taking account of the information before it during the examination, the Panel accepts the proposed seven year commencement period and does not recommend changes to the DCO.

Shared concerns raised by affected persons

6.3.27 Every objection to compulsory acquisition and related powers was individually examined (and the outcome of this process is set out in section 6.4 below). In order to assist in the understanding of this analysis, the Panel has drawn out a number of shared themes that arose from individual submissions, but that are relevant to more than one individual submission.

6.3.28 The shared themes raised by multiple affected persons can be summarised as follows:

- that the most efficient alignments for the A and B cables has not been chosen, and that other possible routes would be more efficient;

- the amount of land sought by the applicant is too great and that there ought to be a more efficient manner of using land to make cable connections;
- in seeking freeholds, the applicant is seeking to take a greater interest in land than it needs, as it could develop the proposed cable alignments onshore using lease or other arrangements less onerous than a freehold interest;
- the proposed cable routes would unduly disrupt farming and equestrian operations, field drainage and access; and
- the constructed cable route would operate as an undue constraint on the future use and development of individual plots of land with development potential.

Other individual concerns were raised, but these are identified and addressed in section 6.4 of this chapter below. Conclusions are drawn in respect of these shared themes after the consideration of the individual aspects of individual submissions in section 6.4.

The most efficient alignment

6.3.29 Affected persons were concerned that more efficient alignments could have been chosen. Where examples were provided, it was suggested that alignments running beside the A174 would reduce the passage of cables through working agricultural land and holdings whilst also providing a reasonably efficient route between the proposed landfall and the grid connection point at the NGET Lackenby substation [REP-456].

6.3.30 The applicant responded that in large part the location of the alignments had been driven by the need to avoid developed land, disruption to existing road and rail infrastructure and unduly adverse impacts on existing farm dwellings, barns and yards. It had sought the most efficient, shortest alignments consistent with these objectives. The applicant made clear its preference to avoid routes directly adjacent to the A174, as this would necessitate multiple access points onto a major highway, in turn a source of safety concerns and potential delays and reductions in the efficient operation of the highway [REP-466, 476, 504].

The amount of land sought

6.3.31 The severability of the A and B development projects suggested to a number of affected persons that essentially double the land actually needed was being sought. Concerns were expressed that a single cable alignment should be used in preference to two alignments and that land-take could be reduced. The extent of proposed corridor widths was not always supported and it was suggested that these could be reduced [REP-308].

6.3.32 The applicant responded to these objections by reiterating its reasoning in favour of the separation of the application into two delivery projects, noting that the scale of the development area at sea

made it inconceivable that this would be delivered as a single project. Further, multiple cable connections would be required for such a large area, even if it were to be developed as a single project. It was prudent in its view to secure cable alignments that were capable of individual delivery in a manner that was freestanding, enabling both alignments to be delivered simultaneously if possible. Narrower alignments would remove or reduce the potential for simultaneous delivery and require highly complex protective relationships between prospective constructors and operators.

6.3.33 The width of the alignments had been designed specifically to accommodate the work requirements for the construction processes intended to be used at each location. Where cut and cover was to be used, the land requirement included the provision of land for a haul road and overburden storage adjacent to its source location. If less land were to be taken, overburden would need to be hauled to other storage locations and the applicant had not sought the land for this. Nor had the environmental impacts of the application been assessed on the basis of significant additional haul movements for overburden [REP-424, 441].

The seeking of freeholds

6.3.34 Several affected persons were concerned that the applicant was proposing what appeared to be fixed-life projects, based on the duration of the proposed Crown lease at sea. On that basis, they contended that freehold interests over land onshore were not required. They had requested the applicant to seek more limited outcomes, for example by offering leasehold / term of years interests [REP-308, 378, 392].

6.3.35 The applicant responded, making clear that it did not consider that the life of the proposed offshore wind farm assets and hence of the cable alignments was necessarily limited to the duration of the Crown lease as currently proposed. It was unwilling to be constrained by an agreement that would limit the operation of the cables to a term of years equal to the Crown lease.

6.3.36 In further rebuttal of this argument [REP-438, 441], the applicant also sought freehold interests because it was concerned that there was no clear legal means to acquire a lease for a term of years under the PA2008. It and its investors required certainty that the application proposals could proceed if the DCO were to be granted: certainty that could only be underpinned in law if it had the right to call for the freehold of land on the cable alignments. For the same reason it sought a consistent set of provisions applicable to all land within the onshore cable corridors.

6.3.37 The applicant made clear its intention that the acquisition of freehold interests would be a 'backstop' position, to be used if the private treaty arrangements being sought did not proceed within a reasonable time or failed altogether. It also made clear its intention to offer

freehold interests back to the original landowner, subject to the retention of rights that would protect the interests of an OFTO after the completion of the construction process.

Disruption to farming

6.3.38 Those persons with agricultural landowner and tenant interests represented by Carter Jonas and Strutt and Parker were concerned about the disruption to agricultural and equestrian activities caused by the compulsory acquisition and passage of cable alignments across rural land [REP-308, 378, 402]. Concerns related to the disruption of access to land and the severance of portions of arable fields, making cultivation more difficult and less productive. Tracks used by an equestrian business would be severed during construction, when agricultural properties would also be exposed to noise and disturbance more generally.

6.3.39 Concerns were also expressed that the construction process would have an inevitable adverse effect on land productivity and drainage, potentially exacerbated by the construction of two separate cable alignments across closely adjacent land at different times. Affected persons were concerns that land productivity would never return to its original level after works and that disruption to drainage would lead to permanent harm if the two projects were not effectively monitored and did not join up [REP-393, 394, 396, 397].

6.3.40 The applicant responded to these concerns, making clear its view that they related in the main to matters which ran to an assessment of the amount of compensation to be paid on acquisition rather than the principle of whether the land should be acquired. The re-establishment of land drainage was a matter that would be provided for in the DCO [REP-424, 455].

Constraints on development potential

6.3.41 Some individual affected persons considered that their land had development potential and that the land and rights sought by the applicant could result in the sterilisation or reduction of this [REP-026, 038, 040, 298, 308]. Concerns were also expressed that operational cable alignments might become effective 'ransom strips', that is means by which the OFTOs could prevent future development or extract shares of development value in a manner unconnected to the operational purpose of the alignments [REP-308].

6.3.42 The applicant responded [REP-466, 477], setting out its view that it had avoided seeking to acquire currently developed urban land and land subject to development plan proposals and extant planning permissions of which it was aware. Whilst it noted that several affected persons had hoped that their land would become available for development in the future, in all instances brought to the Panel's attention, the applicant considered that that hope was still too remote to be a weighty consideration when deciding whether or not to

proceed with compulsory acquisition. The applicant expressed the view that the OFTO(s) would not be able to use powers as an operator to exert undue controls over the future use and development of land. Whilst they would protect their interests in an operational cable alignment, the alignments would not operate as ransom strips and would not sterilise or unduly constrain the future use of the land through which they pass.

6.4 INDIVIDUAL CONSIDERATION OF OBJECTIONS

6.4.1 Representations made in respect of individual landholdings are considered below. The alignments are generally considered moving westwards along the cable route from the landfall between Redcar and Marske-by-the Sea towards the NGET substation site at Lackenby. Exceptions to this approach are taken where objections relate to landholdings in the same ownership which are not located together. In such cases, the entire land holding is considered when the first relevant plot on the route is reached.

6.4.2 Full particulars of all holdings and interests are given in the updated Book of Reference [REP-497,498] submitted at Deadline IX and the following discussion is set out with reference to this.

Hon Robin Dundas, Earl of Ronaldshay (Lord Ronaldshay)

6.4.3 Concerns were raised by surveyors Carter Jonas representing Lord Ronaldshay in respect of freehold interests shown on the Land Plan and recorded in the Book of Reference as follows:

- plots 5, 6A, 6B, 7A, 7B, 8A, 8B, 9A-G and 10; 23A-D, 24A-C; 79-82; freehold interest

6.4.4 Plots 5 to 10 and 79-80 comprise the freehold of Grundales, open arable land located between Coast Road and Redcar Road, Marske-by-the-Sea, inland of the proposed cable landfall site.

6.4.5 Plots 23A-D, 24A-C, 81 and 82 are also open arable land situated between Cat Flatt Lane and the A174, New Marske, and are leased to Mr Keith Wilson of Pontac Farm, New Marske as part of a broader holding that Mr Wilson also leases from a second freeholder, the West Midlands Metropolitan Authority Pension Fund (see paragraphs from 6.4.32 below).

Objection

6.4.6 Lord Ronaldshay did not make a relevant representation, but became involved in the examination as an affected person, having objected to compulsory acquisition through a representation from Carter Jonas made on 14 October 2014 [REP-235]. This noted that negotiations between its client and the applicant were not expected to be successful due to the applicant's 'unrealistic expectations', the precise nature of which was not clarified.

6.4.7 At the 13 November 2014 hearing Carter Jonas was asked to expand on its initial submissions [REP-235, REP-290] and confirmed that the matters concerning its client related to:

- the width of the cable corridor;
- disruption to field drainage;
- impacts on the possible future urban development of the land, including the possibility that the corridor might operate as a form of ransom strip enabling the extraction of value from future development;
- the unwillingness of the applicant to accept a lease or temporary interest in land; and
- the disproportionate effect of compulsory acquisition on landlord and tenant's human rights [REP-308]

6.4.8 These matters were heard further at the 4 December hearing, when Carter Jonas made reference to the temporary rights proposed to be granted to the applicant by the Crown Estate as a basis for temporary rights being employed on land. A lease agreement for a term of years was suggested as an alternative to compulsory acquisition that would be more acceptable to Lord Ronaldshay. The Panel asked Carter Jonas for examples of cases where such a lease agreement was proposed, with examples of DCOs or other relevant consents made in such terms. A sample Deed of Grant was submitted and the Hornsea 1 and Galloper offshore wind farms were offered as examples of where a lease had been negotiated. Reference was also made to the acceptability of a long lease over a transmission alignment to an OFTO in the Neart na Gaoithe case in Scotland [REP-392].

6.4.9 Reference was also made by Carter Jonas to option agreements with Taylor Wimpey to build houses on Lord Ronaldshay's land, with the suggestion that prospects for development had been or would be reduced by the application proposal. At the 4 December 2014 hearing, the Panel requested copies of relevant agreements. Copies of draft agreements, dated 6 November 2014 but apparently unexecuted, were provided [REP-389, 390].

The applicant's response

6.4.10 The applicant's response to the issues raised at the 13 November hearing was given orally at that hearing and submitted in writing thereafter [REP-327]. The applicant's case for compulsory acquisition for the project as a whole was put in the Statement of Reasons and orally at Matter A at the 4 December hearing [REP-424].

6.4.11 At the 4 December hearing the applicant also responded to the more detailed objections [REP-418, 419 and 441], in particular explaining the difficulties with granting a lease for a term of years under PA 2008, which it was advised was legally uncertain and hence insufficient to satisfy prospective investors that the projects would be deliverable. The applicant highlighted its desire to maintain infrastructure corridors with consistent provisions by way of

easements throughout, noting that leases were rarely used for infrastructure corridors. It also highlighted that although the Crown Estate offshore lease was for a term of years, it was by no means certain at this stage what the life of the operational wind farms would be. It was reluctant to concede that onshore cable corridors should have a limited life, when they might still be required to serve offshore infrastructure after the expiry of the Crown Estate lease.

6.4.12 The applicant considered that its compulsory acquisition powers were the minimum necessary to ensure the construction, operation and safeguarding of the cable corridors. It could not envisage that an OFTO would ever use its powers under the DCO to ransom or unreasonably to restrict future urban development, should this occur.

Panel consideration

6.4.13 The Panel was able to view the land at Grundales from the public highway, both at Coast Road to the north and at Redcar Road adjacent to Black's Bridge to the south. The land leased to Mr Keith Wilson was viewed during an accompanied site inspection on 14 January 2015 [HR-053]. The Panel has given careful consideration to the relevant parts of the submissions made on behalf of Lord Ronaldshay and Mr Wilson and to the responses from the applicant.

6.4.14 The Panel has made general findings below in paragraphs 6.4.161 to 6.4.165, to the extent that the alignment proposed is reasonable and that the width of each of the proposed cable corridors is the minimum necessary to support the development of two projects where development may not be simultaneous.

6.4.15 The Panel has also made general findings above about the access and drainage difficulties for agricultural landowners and farmers caused by the possible passage of two cable routes through land in two different phases of development, but considers these harms to be compensable.

6.4.16 The Panel observes that the granting of a lease for a term of years is not normally a legally feasible alternative to compulsory acquisition as a means to underpin the creation of an infrastructure corridor for a NSIP with a demonstrated need case. It notes that previous offshore wind farm developers have concluded infrastructure corridor lease agreements with landowners, notably at Hornsea One and Galloper. However, it understands these to be set out within private agreements where compulsory acquisition has remained as a 'backstop', providing sufficient certainty that a project will proceed, even if a private agreement is not honoured or fails in some way.

6.4.17 The Panel acknowledges efforts by the applicant to conclude mutually satisfactory private agreements in this case too but, having accepted the need case for this application in Chapter 4 above, agrees that a DCO for such an NSIP infrastructure corridor should normally include 'backstop' compulsory acquisition powers to ensure project delivery in

the public interest. The need for renewable power is a compelling public benefit, and the proposed use of the land does not result in a a private loss of sufficient weight to mean that compulsory acquisition powers would be not in the public interest. The Panel recommends that the applicant should be granted a backstop compulsory acquisition power for this part of the alignment. The Panel makes no judgment about the nature of negotiations that have been conducted between the applicant and Carter Jonas. However, the fact that these have been unsuccessful together with the absence of significant movement in the position of either party during the examination adds to the need for compulsory acquisition provisions to apply here.

6.4.18 The Panel observes that there is no development plan allocation or planning permission for the future urban development of this land and so places little weight on the disruptive or sterilising effects of the application proposal on future urban development. The disclosed option agreements do not appear to have been executed, but even if they have been, their existence alone is not sufficient evidence that the land in question has reasonable prospects of future urban development. The Panel accepts the applicant's explanation that the DCO provisions will not be operated as a ransom strip over future development and are limited to the provisions necessary to construct and then to protect, repair and remove buried infrastructure. There is no extant planning or development reason why the cable alignments could not traverse this land and no particular built development outcome would be frustrated or subjected to ransom by the cable proposals.

6.4.19 The Panel observes, on the basis of the compelling need case for the application proposal, together with the lack of specific evidence of human rights impacts advanced for Lord Ronaldshay, that the landlord and tenant's human rights are not disproportionately affected in this case. This finding is made with reference to the fuller discussion of human rights considerations in section 6.8 below.

6.4.20 The Panel also observes that this land is required for the development to which the development consent relates, the land to be acquired is no more than is reasonably required and the public benefit outweighs the private loss, subject to satisfactory safeguards in respect of access (requirement 23 - highway access) and reinstatement (requirements 24 - construction, management and maintenance of surface drainage) and 34 - restoration of land used for temporary construction). The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

Mr Arthur Clifford Jowsey

6.4.21 Concerns were raised by Mr Jowsey, by Mr Kevin Keddie on behalf of Mr Jowsey, and by Landgrow Company in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- plots 19A, 19B, 20A and 20B; freehold and occupier interests.

6.4.22 The land is currently used for agricultural purposes, but shares a highway access with a horticultural business and a dwelling. An agricultural barn has been constructed close to the proposed cable route and there is extant planning permission for a further barn which would have a cable route passing beneath it.

Objection

6.4.23 Concerns were raised by Landgrow Company as occupier in its relevant representation [REP-028] in relation to reinstatement and the proposed cable route passing under an existing barn. Concerns were also raised by Mr Jowsey in his relevant representation [REP-038] and by Mr Keddie on behalf of Mr Jowsey [REP-040] in respect of the prospects for future development of the land for urban purposes.

6.4.24 Matters raised by and on behalf of Mr Jowsey were heard on 13 January 2015. A statement from Mr Jowsey, a statement from Mr Keddie and a list of points for the Panel's consideration [REP-454] were submitted and considered at the hearing.

6.4.25 Evidence of firm plans for the future development of the land was requested by the Panel, and a letter from ES Group, stating that it has been in discussion with Mr Jowsey and had been instructed to prepare a planning application, was received in response [REP-461]. Evidence of planning permission for a second barn was provided by Mr Langton in his submission to the Panel [REP-481].

The applicant's response

6.4.26 A response to the issues raised at the 13 January hearing was given orally at that hearing [REP-466] and further information was submitted in later written submissions [REP-477] which confirmed that the land was not currently included in the Local Plan and so was considered to have limited future development potential, that HDD was proposed to minimise disruption both to the existing and proposed barns and that other concerns were matters of compensation that could not be dealt with at this stage.

Panel consideration

6.4.27 The Panel undertook an accompanied site inspection to view the land on 14 January 2015 [HR-053], and noted that the proposed cable route is likely to pass close to, rather than under, the existing barn.

6.4.28 The Panel accepts that there is a strictly limited availability of unconstrained and undeveloped land between Redcar and Marske-by-the Sea within which cable alignments towards Lackenby can be located. It accepts that cable alignments need to cross the Redcar to Saltburn railway line and Redcar Road, and notes that Blacks Bridge has been identified as the most efficient crossing point. It concurs

with the applicant's reasoning for the selection of the cable routes in this location.

6.4.29 On this basis, the Panel observes that there is a strong need and justification for the cable alignments to pass through this land. Cable routes here offer the prospect of lower adverse impacts than a range of possible alternatives.

6.4.30 The identified corridor has been routed to limit the adverse effects of construction on the existing agricultural use as far as possible. Concerns about loss of access and agricultural productivity are real, but minor in the context of the public benefit from the application proposal. The remedy for these concerns will be provided through compensation.

6.4.31 Turning to future development prospects, the Panel observes that there is as yet no development plan allocation or grant of planning permission for the future urban development of this land, other than for the development of an additional barn. The existence of planning permission for an additional barn alone is not sufficient reason to withhold compulsory acquisition powers on this land, because the cable alignments in this location would be within HDD ducts. There is no extant reason arising from future development prospects why the cable alignments should not traverse this land and no built development outcome that would be frustrated by the cable proposal. The Panel therefore observes that the applicant's proposal for compulsory acquisition is acceptable subject to satisfactory safeguards in respect of reinstatement, particularly of the land drainage system (requirement 24 - construction, management and maintenance of surface drainage). The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

West Midlands Metropolitan Authority Pension Fund

6.4.32 Concerns were raised by surveyors Knight Frank on behalf of the West Midlands Metropolitan Authority Pension Fund (the Fund) in respect of the plots shown on the Land Plan and recorded in the Book of Reference as owned by Wolverhampton City Council as follows:

- Plots 22A, 22B, 27A-D, 28, 29A, 29B; freehold interest.

6.4.33 The land is leased to Mr Keith Wilson of Pontac Farm, New Marske and is managed in combination with land leased from Lord Ronaldshay (see paragraphs from 6.4.3 above).

6.4.34 In its relevant representation [REP-026] and subsequent written representation [REP-298], the Fund stated that the land is potential development land that could be sterilised by the application proposal, and offered to grant the applicant a lease. No evidence was provided of the particular development potential of this land.

The applicant's response

6.4.35 There was no request to be heard. The applicant did not respond orally to these representations. General submissions from the applicant in respect of the sterilisation of future urban uses and the prospects for granting a lease as a means of avoiding compulsory acquisition have been taken into account.

Panel consideration

6.4.36 The Panel has considered the need for the proposed alignments to utilise this land and, noting the constraints on possible alternative routes outlined from paragraph 6.4.24 above, observes that at this land forms part of the best and most efficient route and is required on that basis.

6.4.37 The Panel's consideration of a request that compulsory acquisition should be set aside in favour of a lease in respect of Lord Ronaldshay's land is set out above in paragraphs from 6.4.6 and the reasoning there underpins the Panel's reasoning here.

6.4.38 The Panel's consideration of the implications of compulsory acquisition for possible future urban development in respect of Lord Ronaldshay's land is set out above in paragraphs from 6.4.6 and the reasoning there also underpins the Panel's reasoning here.

6.4.39 The Panel observes that the applicant's compulsory acquisition proposals are acceptable.

Messrs K & T Wilson

6.4.40 Concerns were raised by surveyors Strutt & Parker representing Messrs K & T Wilson (Mr Keith Wilson) in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 22A, 22B; 23A-D, 24A-C; 27A-D, 28, 29A; tenant and occupier interests

6.4.41 Plots 22A and B and plots 27A-D, 28 and 29A are leased from the West Midlands Metropolitan Authority Pension Fund and plots 23A-D and 24A-C from Lord Ronaldshay.

6.4.42 The land which Mr Wilson farms is split into two parts by the A174. Plots 22A, 22B; 23A-D, 24A-C are located between Cat Flatt Lane and the A174 and plots 27A-D, 28 and 29A are on the other side of the A174.

Objection

6.4.43 Concerns were raised by Strutt & Parker in its representation [REP-378] in respect of access, noise and communication with the applicant concerning acquisition of rights.

6.4.44 These matters were heard on 4 December 2014, along with a further matter relating to the impact of the scheme on field drains [REP-397].

6.4.45 The land proposed to be traversed by the cable routes between Cat Flatt Lane and the A174 is in two separate ownerships, namely the West Midlands Metropolitan Authority Pension Fund and Lord Ronaldshay. The boundary between these holdings has been removed and a central drainage ditch has been replaced by a drainage pipe across the land that stands to be affected by the cable routes.

6.4.46 The land proposed to be traversed by the cable routes on the other side of the A174 is in the ownership of the West Midlands Metropolitan Authority Pension Fund.

6.4.47 This matter therefore relates to the consideration of the interests of Lord Ronaldshay from paragraph 6.4.3 above, as part of the affected land subject to Mr Wilson's concern is leased from him, and of the West Midlands Metropolitan Authority Pension Fund from paragraph 6.4.32 above.

6.4.48 Mr Wilson was concerned about his ability to access both sides of the cable alignments during works and about noise during construction. He was also concerned about effective communication, noting that the applicant's land agents had not been easy to communicate with, as they appeared to prefer to deal with his landlords, the freeholders, yet the operational impact of the works would be on his business.

The applicant's response

6.4.49 A response to the issues raised at the 4 December 2014 hearing was given orally at that hearing (and submitted in [REP-424]). A further submission was also made [REP-455] explaining the applicant's position, acknowledging temporary disruption during construction, stating that mitigation measures will be secured in the DCO by means of the Code of Construction Practice and requirement 26 and that losses will be addressed by means of compensation in due course, and offering to meet Mr Wilson directly.

Panel consideration

6.4.50 The Panel undertook an accompanied site inspection to view the land on 4 December 2014 [HR-047].

6.4.51 The Panel observes that there will be temporary disruption during construction. Access will also be limited during the construction periods. The effects of these on agricultural production are not so significant as to indicate that compulsory acquisition powers should not be granted. Their effects are matters to be addressed in a compensation claim. There will be construction noise, but the Panel is satisfied that the applicant has sited the proposed alignments to minimise effects on sensitive receptors and has also acted prudently to control this through the proposed Code of Construction Practice (CoCP). Drainage matters can be resolved subject to satisfactory

safeguards in respect of reinstatement. The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

Mr John Archie Pybus

6.4.52 Concerns were raised by surveyors Strutt & Parker representing Mr Pybus in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 30A-D, 31, 33Ai, 33Aii, 33Bi, 33Bii; freehold interest.

6.4.53 Mr Pybus' land affected by the cable routes is predominantly flat arable land straddling Grewgrass Lane to the south of Grewgrass Farm buildings. It is bounded by the land farmed by Mr Wilson to the east and by the Roger Dyke watercourse to the west.

Objection

6.4.54 Matters were raised by Strutt & Parker in its representation [REP-378] in respect of access, noise and vibration, and acquiring a lease for a term of years rather than permanent rights.

6.4.55 These matters were heard on 4 December 2014, along with a further matter relating to the impact of the scheme on field drains and a livery business [REP-394].

The applicant's response

6.4.56 A response to the issues raised at the 4 December 2014 hearing was given orally at that hearing and submitted in REP-424. There was a further submission explaining the applicant's position [REP-455], acknowledging temporary disruption during construction, stating that mitigation measures will be secured in the DCO by means of the Code of Construction Practice and that impact on Mr Pybus' livery business will be addressed when accommodation works are discussed.

Panel consideration

6.4.57 The Panel undertook an accompanied site inspection to view the land on 4 December 2014 [HR-047].

6.4.58 The particular concerns raised have been addressed in the Panel's consideration of other submissions above. There are no further individual circumstances here that would justify a departure from the findings that the Panel has already made. The Panel therefore observes that the applicant's proposals for the cable corridor are acceptable subject to satisfactory safeguards in respect of reinstatement. The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name)

includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

Mr Gerald Michael Towers

6.4.59 Concerns were raised by surveyors Strutt & Parker representing Mr Towers in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 34A-D, 35; 39, 40A-D; 83-85; freehold interest.

6.4.60 The Towers' land is predominantly flat arable, lying between Roger Dyke and Mains Dyke watercourses and straddling Fishponds Road. Plots 39 and 40A-D are to the west of Fishponds Road and are owned jointly with William Wardman Ltd.

Objection

6.4.61 Concerns were raised by Strutt & Parker in its representation [REP-378] in respect of access, noise and vibration, and acquiring a lease for a term of years rather than permanent rights.

6.4.62 Matters raised on behalf of Mr Towers were heard on 4 December 2014, along with a further matter relating to the impact of the scheme on field drains and a livery business [REP-394].

The applicant's response

6.4.63 A response to the issues raised at the 4 December 2014 hearing was given orally at that hearing and submitted in REP-424. A further submission was also made explaining the applicant's position [REP-455], equivalent to that response summarised in paragraph 6.4.57 above.

Panel consideration

6.4.64 The Panel undertook an accompanied site inspection to view the land on 4 December 2014 [HR-047].

6.4.65 The particular concerns raised have been addressed in the Panel's consideration of other submissions above. There are no further individual circumstances here that would justify a departure from the findings that the Panel has already made. The Panel observes that the applicant's proposals for the cable corridor are acceptable subject to satisfactory safeguards in respect of reinstatement. The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

Michael and Patricia Scaife

6.4.66 Concerns were raised by Mr Charles S Langton on behalf of Michael and Patricia Scaife (the Scaifes) in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 37A, 37B, 38; freehold interest.

6.4.67 The land in question is a residential garden situated adjacent to the west side of Fishponds Road. It is a slender strip of land, extending some 550m northwards from the main residence in the village of Yearby. The land is set around a watercourse and divides Fishponds Road from the open arable farmland owned by Messrs Towers and Wardman to the west.

Objection

6.4.68 Concerns were raised by Mr Charles S Langton on behalf of the Scaife family in his relevant representation [REP-014] in respect of the use of the land and the need for HDD to pass the cable routes under the Scaifes' garden. His preference was that any cable route should pass further to the north, adjacent to the A174. These matters were heard in detail on 13 January 2015 [REP-456].

The applicant's response

6.4.69 The applicant responded orally to the issues raised at the 13 January 2015 hearing [REP-466], and further response and explanation was submitted in REP-476 and REP-504, explaining the HDD process, offering reassurance regarding the limited likelihood of the cables failing in service and explaining the need to route the cables clear of the A174, the cemetery and a major gas pipeline to the north, thus necessitating their passage through the Scaife land.

Panel consideration

6.4.70 The Panel undertook an accompanied site inspection to view the land and the location of the proposed HDD on 14 January 2015 [HR-053].

6.4.71 The Panel has considered the potential for siting cable alignments in this location and notes that locations crossing Fishponds Road to the south of the current proposed location appear likely to bring the alignments much closer to farm buildings, an airstrip on the Towers land and occupied dwellings than the application proposal. Similarly, alternative routes further to the north including those alongside the A174 would be constrained by the recently constructed Kirkleatham Memorial crematorium development.

6.4.72 The proposed short crossing of the Scaifes' garden land by HDD represents a lower impact and preferable option to other potential routes in this broad location. The cable crossing point is sufficiently remote from the main dwelling for the Scaife family not to experience significant adverse amenity effects due to the proposed HDD works.

In terms of construction and operational impact, the use of HDD in this location would significantly limit the direct effects that would be experienced on the Scaife land. The likelihood of cable failure in a drilled duct is remote. Should this happen, whilst the effects could be disruptive, they would be a matter for negotiation and compensation at the time and do not provide a basis for rejecting this element of the proposed routes. The Panel hence observes that the applicant's proposals for the cable corridors are acceptable and that the compulsory acquisition should proceed. The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) is required to include a method statement for the crossing of watercourses by HDD that will apply to the crossing of this land.

William Wardman Limited

6.4.73 Concerns were raised by Strutt & Parker representing William Wardman Limited in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 39, 40A-D; freehold interest.

6.4.74 The land is to the west of Fishponds Road and is jointly owned with Mr Gerald Michael Towers (see paragraphs from 6.3.60 above).

Objection

6.4.75 Concerns were raised by Strutt & Parker in its representation [REP-378] in respect of access and acquiring a lease for a term of years rather than permanent rights.

6.4.76 Matters raised on behalf of William Wardman Limited were heard on 4 December 2014, along with a further matter relating to the impact of the scheme on field drains and a livery business [REP-393].

The applicant's response

6.4.77 A response to the issues raised at the 4 December 2014 hearing was given orally at that hearing and submitted in REP-424. Further responses were submitted explaining the applicant's position in respect of leases [REP-438] and in respect of temporary disruption, mitigation measures and impact on Mr Wardman's livery business [REP-455].

Panel consideration

6.4.78 The Panel undertook an accompanied site inspection to view the land on 4 December 2014 [HR-047].

6.4.79 The particular concerns raised have been addressed in the Panel's consideration of other submissions above. There are no further individual circumstances here that would justify a departure from the findings that the Panel has already made. The Panel therefore

observes that the applicant's proposals for the cable corridor are acceptable subject to satisfactory safeguards in respect of reinstatement. The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

Mrs J Bullock

6.4.80 Concerns were raised by Strutt & Parker representing Mrs J Bullock in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 45A, 45B, 51A, 51B, 66, 67A-F; 86, 87; interests as tenant and occupier.

6.4.81 The land in question is in two parts. Plots 45A and B and 51A and B are at Mains Dyke watercourse at the eastern end of the Wilton Complex on either side of the main access road and close to the roundabout junction with the A174. They are part of larger landholdings in the ownership of Sembcorp and earmarked for development.

6.4.82 The remaining plots are also in the ownership of Sembcorp and are situated on the west side of the dual carriageway Greystone Road, accessed from the Wilton Complex on foot via an underpass and close to the existing NGET substation at Lackenby.

Objection

6.4.83 Concerns were raised by Strutt & Parker in its representation [REP-378] in respect of security, access, noise and vibration.

6.4.84 Matters raised by Strutt & Parker on behalf of Mrs J Bullock [REP-402] were heard, along with matters affecting the other clients of Strutt & Parker, on 4 December 2014, along with a further matter relating to the impact of the scheme on field drains [REP-396].

The applicant's response

6.4.85 A response to the issues raised at the 4 December hearing was given orally at that hearing and submitted in REP-424. A further response was submitted explaining the applicant's position [REP-455], equivalent to that response summarised in paragraph 6.4.57 above.

Panel consideration

6.4.86 The Panel undertook accompanied site inspections to view the land at Mains Dyke on 15 October 2014 [HR-015] and the land at Old Lackenby on 13 November 2014 [HR-021, HR-039].

6.4.87 The particular concerns raised have been addressed in the Panel's consideration of other submissions above. There are no further

individual circumstances here that would justify a departure from the findings that the Panel has already made. The Panel therefore observes that the applicant's proposals for the cable corridor are acceptable subject to satisfactory safeguards in respect of security and reinstatement. The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

Sembcorp Utilities (UK) Limited (Sembcorp)

6.4.88 Concerns were raised by Sembcorp in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 45A, 45B, 46A, 46B, 47A, 47B, 48, 49A, 49B, 50, 51A, 51B, 52A-C, 53, 55, 56, 57, 58, 58B, 58F-H, 58X-Z, 59, 59i, 60A, 60B, 61A, 61B, 64, 66, 67A-F, 74; 86, 87; freehold interest.

6.4.89 Although all plots are in the ownership of Sembcorp, not all plots are within the Wilton Complex itself.

6.4.90 The Wilton Complex is a large, specialised industrial, research and development park hosting petrochemical and energy industries. It is chiefly occupied by an integrated petrochemical facility within a secure perimeter, but also contains some undeveloped land. The complex is owned by Sembcorp, but individual industrial processes are carried on by a range of individual operators who hold leases and receive infrastructure support from Sembcorp. Chapter 2 of this report set out a description and history of the Wilton Complex, the role of Sembcorp and the activities undertaken there by Sembcorp's tenants, which should be referred to by the reader at this point as it provides useful context for the description and reasoning which follows.

6.4.91 The Sembcorp objection also relates closely to that of SABIC set out from paragraph 6.4.125 below. SABIC is a tenant of Sembcorp and operates a cracking plant within the Wilton Complex. The Panel has given their objections individual consideration although recognising that their operational interests are closely interrelated.

Objection

6.4.92 Sembcorp has expressed itself throughout the examination as generally in favour of the principle of the application proposal. It is in the process of negotiating heads of terms with the applicant prior to preparing and executing the necessary land agreements [REP-070] for what it would hope to be the siting of the converter stations, the routing of the HVDC cable alignments to it and the routing of the HVAC cable alignment from it through the Wilton Complex [REP-129].

6.4.93 However, concerns were raised by Sembcorp in its representations in respect of:

- the width of the cable alignments passing through the Wilton Complex [REP-071, REP-129];
- the sterilisation of potential industrial development plots [REP-071, REP-129, REP-532]; and
- the routing of the cables through land recently developed and occupied by GrainCo on a long lease [REP-071].

6.4.94 Significant areas of land within and adjacent to the secure perimeter of the Wilton Complex remain undeveloped. Sembcorp is seeking tenants and developers for this land (GrainCo being is one), with a preference for new use and development that will make best use of this existing heavy industrial, petrochemical and energy industry location with extensive access to existing production processes and specialist infrastructures and with a port close by. This endeavour is supported through the designation of undeveloped land in this location as an Enterprise Zone. Sembcorp's vision for the future of this land, its significance and the general suitability of the applicant's proposed use and development of it is shared with Redcar and Cleveland Borough Council [REP-073] and the Local Economic Partnership Tees Valley Unlimited [REP-072].

6.4.95 Sembcorp submitted that poorly considered siting, poor coordination of acquisition, and poorly executed construction of the cables and related infrastructure by the applicant and the Bizcos could reduce the development potential of this specialised industrial land by reducing plot sizes and generating new development constraints. However, the concern that the applicant's proposals would affect the newly developed GrainCo facility was resolved through a proposed change to the application (identified in Chapter 2) and which Sembcorp now supports.

6.4.96 The matters raised in the Sembcorp objection were heard on 13 November 2014 and 13 January 2015. Following the 13 November 2014 hearing, Sembcorp submitted a progress update [REP-314] confirming (at page 2 paragraph 3) the withdrawal of its remaining representations in respect of land sterilisation and the width of cable corridors (to the extent that too much or unnecessary land or rights were sought). It follows that these objections to the application from Sembcorp are resolved. It should also be noted that Sembcorp does not object to the principle that the converter stations should be located within its land holding.

6.4.97 In paragraph 3 on page 2 of its update [REP-314], Sembcorp summarised its remaining concerns as relating to:

- objections to the applicant being granted compulsory acquisition powers within Wilton; and
- the need for the applicant to propose and negotiate key requirements and protective provisions to form a new Part 6 of Schedule 8 to the DCO in respect of the Wilton complex (the Wilton Provisions) as part of the DCO.

6.4.98 At and following the 13 November 2014 hearing, Sembcorp made the following submissions [REP-402]:

- it has since 2003 held the role of 'ringmaster' in relation to the Wilton Complex, in a manner that has enabled the continued safe, effective and integrated operation of diverse, complex and potentially hazardous industrial plant in separate ownerships, thus inferring that it should be treated as being analogous to a statutory undertaker;
- this 'ringmaster' role has enabled potential conflicts between tenants managing and upgrading large and complex plant to be avoided in a manner that has maximised the social and economic benefit to be obtained from the complex as a whole;
- the application proposal was for what amounted to another energy industry use of land on the Wilton Complex, and the passage of the cable alignments and the related development process within the complex would best be regulated alongside other existing and proposed uses and developments within the complex, in order to avoid unforeseen conflicts between the application proposal and other use and development; and
- it did not believe that the applicant had demonstrated that the public benefit arising from compulsory acquisition in the Wilton complex outweighs the private loss

6.4.99 Following the 13 January 2015 hearing, Sembcorp submitted a summary of representations [REP-483], appending a joint Sembcorp/SABIC version of protective provisions for the Wilton Complex (described as the 'Wilton Provisions') and also reinforcing its arguments that:

- it effectively operates in a manner analogous to a statutory undertaker within the Wilton Complex and should continue to do so in order to protect the economic benefit to be derived from the activities taking place within the complex; and
- the applicant's proposals in respect of funding and insurances in place in respect of the protection of apparatus and rights of operators within the Wilton Complex are insufficient, should the applicant's proposed works disrupt these in any way

6.4.100 In order to assist in progressing agreement on the Wilton Provisions, the Panel issued on 21 January 2015 question 17-20 under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010. Sembcorp submitted a response [REP-540] which effectively reiterated the points it made at the 13 January 2015 hearing, there having been no significant movement in the applicant's position.

6.4.101 In particular, Sembcorp submitted that it remained opposed to the granting of compulsory acquisition powers within the Wilton Complex, stating that the applicant should give up powers which, by its own oral submissions on 13 January 2015, it does not expect to use (Appendix A paragraph 4). The applicant should align its operations within the complex with the established principles and procedures adopted by all

the other Wilton operators. The applicant should accept that it is but one of the 'ecosystem' of operators there and should be subject to a method for expert determination of any dispute affecting the relationship between the delivery of the application proposal and another Wilton operation.

6.4.102 Sembcorp also expressed remaining concerns in respect of the level of insurance being subject to expert determination after works have commenced, and invited the Panel to modify the draft DCO to include SABIC's version of the Wilton Provisions.

6.4.103 In order to assist in its determination of public benefit and private loss, and whether a change to the DCO were feasible, the Panel issued questions 17-30 and 17-31 under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 to the applicant and SABIC on 29 January 2015. These questions sought views on the balance to be struck between the needs of Wilton operators and the needs of the applicant. In its comment on the Panel's Rule 17 question 17.31, Sembcorp expressed itself as being in favour of changing the draft DCO to enhance protective provisions for the Wilton Complex and to remove compulsory acquisition powers, without recommending refusal of the application as a whole. It also supported SABIC's latest iteration of the draft Wilton Provisions [REP-540].

6.4.104 In its closing submission [REP-550], Sembcorp reiterated its opposition to the granting of compulsory acquisition powers, acknowledging that adoption of SABIC's version of the Wilton Provisions might slightly extend the cost and/or delivery time of the application proposal but would not prevent it from going ahead.

6.4.105 Sembcorp remained concerned that the granting of compulsory powers to the applicant would be used (by the applicant's successors) to circumvent the Wilton Provisions, and again invited the Panel to consider:

- whether the public benefit outweighs private loss; and
- whether compulsory acquisition of the Wilton land should be excised from the DCO

The applicant's response

6.4.106 The applicant's case explaining the overarching need for compulsory acquisition [REP-327] does not address the specific issues arising within the Wilton Complex in detailed terms. A response to the issues raised at the 13 November 2014 hearing was given orally at that hearing and in writing thereafter [REP-373].

6.4.107 Following the 4 December 2014 hearing, at which the applicant's overall case for compulsory acquisition was examined and tested by the Panel, the applicant submitted a summary of the hearing [REP-424], and also made written submissions in respect of Deed of Grant [REP-418] and Restrictive Covenants [REP-419]. A response to the issues raised at the 13 January 2015 hearing was given orally at that

hearing and submitted in writing thereafter [REP-466]. In summary, the applicant's position was that little movement had occurred between the parties.

6.4.108 The applicant provided its proposed wording for the Wilton Provisions and stated that its case relevant to compulsory acquisition is that:

- the DCO powers should be capable of exercise subject to the Wilton Provisions; and
- the additional control and absence of compulsory acquisition powers proposed by the Wilton parties put the delivery programme at risk and may deter funders [REP-471]

6.4.109 In its Deadline IX (27 January 2015) response to the Panel's Rule 17 question 17-20, the applicant confirmed [REP-502] that its preferred Wilton Provisions had been submitted to the Panel within version 7 of the draft DCO at Deadline IX (27 January 2015) [REP-499, REP-500]. The applicant also acknowledged that issues of principle remained outstanding: these were submitted separately by the applicant as a Statement of Reservations at Deadline X (2 February 2015) [REP-537].

6.4.110 In its Deadline X (2 February 2015) response to the Panel's Rule 17 question 17-31, the applicant argued against excising the Wilton section of the cable route from the DCO [REP-539] on the basis that:

- its draft protective provisions (as included in version 7 of the draft DCO) provide proportionate, robust and enforceable mechanisms for addressing the legitimate concerns about the effect of the project on operations at Wilton; and
- its proposed Wilton Provisions strike the right balance between public benefit and private loss

6.4.111 In its Deadline X (2 February 2015) response to the Panel's Rule 17 question 17-32, the applicant acknowledged that important private interests could be affected by its proposal, and that the continued safe and economic operation of Wilton businesses, including the SABIC cracker, is in the public interest [REP-539].

6.4.112 However, the applicant submitted that there is a balance to be struck between the national public interest of its proposal and the public and private interests in the operations at Wilton, and in its response to question 17-32 quantified the potential socioeconomic benefits of its application proposal [REP-539].

6.4.113 The applicant made its final submission to the Panel by way of a response to Sembcorp's Deadline X (2 February 2015) submissions [REP-547] at Deadline XI (4 February 2015). In its response, the applicant stated that the project could be delivered with the SABIC version of the Wilton provisions (albeit that these subordinate the national interest to the interests of Wilton operators and that there are safeguards preventing improper exercise of the DCO powers), but not

if part of the cable route is excised. The applicant also appended a further and final draft version of its Wilton Provisions.

Panel consideration

6.4.114 The Panel undertook an accompanied site inspection to view the Wilton Complex on 15 October 2014 [REP-070, HR-015]. The Panel has also given careful consideration to the submissions made by Sembcorp and to the responses from the applicant.

6.4.115 Although some progress was made during the examination period, core differences in position remain between the applicant and Sembcorp in respect of compulsory acquisition and protective provisions.

6.4.116 As set out in Chapter 4, the Wilton Complex as a whole is a highly significant economic asset. It is not an NSIP or the subject of NPS policy. Nor do Sembcorp or any of the Wilton Complex tenants have the status of statutory undertakers. However, the Wilton Complex does make an important and relevant contribution to national economic life as an integrated petrochemical facility. This is a matter to which the Panel attaches considerable weight. The success of the Wilton operation as such is secured through the 'ringmaster' role played by Sembcorp since 2003, whereby each individual tenant is provided with the infrastructure that it requires to operate and that the development plans of each tenant and operator are balanced with those of other tenants and operators to ensure that the safety and economic well-being of each is achieved without compromising the safety and economic well-being of its neighbours.

6.4.117 Sembcorp achieves these outcomes in large part through the complex interplay of existing contracts and property rights that regulate its relationship with tenant plant operators and regulate access and the exchange of materials through highly complex shared infrastructure. It also acts in many respects as a 'quasi-public authority', convening, representing and regulating its tenants to maximise shared benefit and minimise conflict. The unfettered operation of compulsory acquisition powers in the absence of engagement between the undertakers and Sembcorp could have significant adverse effects on the continued safe and economic operation of the Wilton Complex.

6.4.118 The continued safe operation of the Wilton complex, employment and the generation of economically significant products and other economic benefits there is in the public as well as the private interest. The applicant acknowledges this. The public benefit offered by the continued successful operation of the Wilton Complex as a whole is relevant and important under the PA2008, is substantial and forms an important and relevant consideration in the decision to be taken on this application. It follows that there is not a simple trade-off within the Wilton Complex between the public interest as represented by the development of the proposed NSIP and the private interests of Sembcorp.

6.4.119 This is important because, just as the applicant is concerned that Sembcorp as 'ringmaster' of the Wilton Complex might act to frustrate the delivery of the application proposal if too much power is ceded to it over decisions relating to delivery, so Sembcorp is concerned about the applicant being provided with powers that enable it to interfere with the operations of Sembcorp and others within the Wilton Complex. Sembcorp's concerns are essentially that the applicant and its successors in title have neither the duty nor necessarily the technical understanding to balance their needs against those of Sembcorp and its tenants.

6.4.120 This position takes account of the fact that several Sembcorp tenants are operating large, technically complex and high economic value petrochemical plant. This is plant which may cause significantly adverse and possibly hazardous social, economic and environmental effects should access to it be blocked, repairs or upgrades be delayed or significant infrastructure be damaged. If the applicant has pre-emptive powers, including the compulsory acquisition of land within the operational area of such an integrated petrochemical plant, the potential for the timing of acquisition and development and for the interference with access, operations and other upgrade proposals could be significantly detrimental to the continuing safe and economic operation of plant, both that of individual operators and within the Wilton Complex as a whole.

6.4.121 The main disagreement is focused on where and how the balance between the public benefit of the applicant's proposal and of the Wilton operations on the one hand and the private loss to the various operations at Wilton, including existing and planned employment, is to be struck. Here, the Panel is clear that the weight to be accorded to the public benefit of the applicant's NSIP is equivalent to the weight to be accorded to the continuing safe and economic operation of the Wilton Complex.

6.4.122 The Panel has deliberated at length as to whether the compulsory acquisition and related powers associated with this section of the cable route through the Wilton Complex should be excised from the Order. The Panel concludes that this would be a disproportionate response in view of the wider benefits of the applicant's proposal as a whole. This is because, as set out in Chapter 7 below, the Panel is satisfied that protective provisions capable of controlling the effects of the exercise of compulsory acquisition and related powers on Sembcorp's interests can be included in the DCO and has recommended accordingly. As is explained more fully in Chapter 7, the purpose of the proposed protective provisions is to ensure that the applicant cannot use CA (in addition to other) powers in a way that would frustrate or damage planned maintenance and upgrade proposals for the Wilton Complex and lead to substantial social and economic harm. The protective provisions as recommended by the Panel would provide that the applicant must consult with Wilton owners and operators before putting CA powers into effect. The effect of these changes would be to ensure that the undertakers' delivery programme is designed taking

full account of any Wilton upgrades and maintenance proposals. It is not necessary to excise the compulsory acquisition powers in order to respond to Sembcorp's concerns.

6.4.123 In reaching this conclusion, the Panel has noted Sembcorp's support for the principle of the application as a whole and for the use of land at Wilton to host development associated with it. The Panel also notes that the delivery of the cable alignments through the Wilton Complex is agreed to be technically feasible, as long as the applicant is prepared to take its place as one of the 'eco system' of entities active within the complex, ensuring that its needs are balanced with those of other entities rather than taking precedence over them. This is a matter to which the Panel returns in Chapter 7 below (the DCO) where Schedule 8 Part 6 (protective provisions for the Wilton Complex) are discussed.

6.4.124 The Panel therefore observes that the applicant's compulsory acquisition proposals for the cable corridor as a whole are acceptable subject to satisfactory protective provisions which safeguard Sembcorp's interests locally while enabling the project as a whole to proceed. The means by which this can be achieved is set out in Chapter 7 below when discussing protective provisions in Schedule 8 Part 6 of the DCO.

SABIC UK Petrochemicals Limited (SABIC)

6.4.125 Concerns were raised by Bond Dickinson representing SABIC in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 42A, 42B, 43A, 43B, 44A, 44B; easements or other private rights; and
- plots 48, 49A, 49B, 50; 52A, 53; right of way

6.4.126 Although all plots are on Wilton land, not all are within the Wilton Complex itself. They relate chiefly to access, including access for large loads such as Abnormal Indivisible Loads, to the Cracker and to the Trans Pennine Ethylene Pipeline (TPEP) and the Brine Pipes.

Objection

6.4.127 In its written representation [REP-295], SABIC's relevant concerns are in respect of extinguishment of rights in relation to access to the Cracker, particularly in view of the planned overhaul in 2016, and in respect of the TPEP and the Brine Pipes.

6.4.128 At the 13 November 2014 hearing, SABIC's initial view was that it required protection of its easements, and that the Wilton Provisions might be capable of allaying its concerns [REP-313].

6.4.129 SABIC also stated that planning consent will be required for the planned 2016 upgrade to the Cracker, for which an application has been submitted, but not for a maintenance overhaul [REP-313].

6.4.130 Following the 4 December 2014 hearing, SABIC submitted its response to the applicant's justification for its compulsory acquisition proposals and an argument that the public benefit derived from extinguishment or indefinite suspension of SABIC's rights does not outweigh the private loss which SABIC would sustain [REP-399].

6.4.131 SABIC also submitted its draft version of the Wilton Provisions and a commentary and justification for them [REP-399].

6.4.132 These matters were heard at the 13 January 2015 hearing, following which SABIC submitted at Deadline VIII (19 January 2015) an update in respect of the development of its version of the Wilton Provisions, an up to date copy of those provisions and a reasoned commentary on the Panel's draft DCO [REP-463].

6.4.133 At Deadline IX (27 January 2015) SABIC responded to the applicant's post-hearing submissions on the Panel's draft DCO and to the applicant's proposed Wilton Provisions, and submitted a statement of residual adverse effects [REP-487].

6.4.134 The relevant residual adverse effects remained focused chiefly on SABIC's ability to undertake planned overhaul and upgrade of the Cracker and the knock-on effects on other parts of the Wilton Complex if it had to be taken off-line due to exercise of compulsory acquisition powers by the applicant. SABIC quoted (on page 21 of its submission) paragraph 4.1.3 of the Overarching National Policy Statement for Energy in support of its argument in respect of the Panel considering refusal of the application on grounds of potential adverse impacts as well as measures to avoid, reduce or compensate for any adverse impacts [REP-487].

6.4.135 In order to assist in its determination of public benefit and private loss, and whether a change to the DCO were feasible, the Panel issued on 29 January 2015 questions 17-30 and 17-31 under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 to the applicant and SABIC. At Deadline X (2 February 2015), SABIC submitted its response to the Panel's Rule 17 questions and, as requested, its Statement of Reservations [REP-541].

6.4.136 In response to question 17-30, SABIC argued that, when considering the impact of a proposal on employment, greater weight should be attached to existing employment than to the potential employment that might arise as a result, citing the case of *London Thames Gateway Development Corporation (Bromley-by-Bow) (South) Compulsory Purchase Order 2010 (Appeal Reference LDN 023/E5900/005/003 paragraph 10.44)* in support of its position.

6.4.137 In response to question 17-31, SABIC argued in support of approach 3, namely that a change could be made to the draft Order as applied for, using the DCLG's letter to the IPC dated 28 November 2011 (the Bob Neil letter) and the test in *Bernard Wheatcroft Limited v Secretary of State for the Environment (1982) 43 P & CR 233,* and proposed the

possibility of the Panel recommending excising the part of the cable alignment through the Wilton Complex from the draft Order.

6.4.138 In respect of its Statement of Reservations, SABIC noted that there had been no progress on narrowing the issues since Deadline VIII, reiterated that the draft DCO would permit the applicant to take powers entirely at odds with the operation of the Wilton site and, in the absence of agreement on these issues, invited the Panel to consider five possible options:

- Option 1 - refuse the application outright;
- Option 2 - make the DCO omitting the parts that adversely affect SABIC;
- Option 3 - make the DCO including SABIC's Wilton Provisions;
- Option 4 - make the DCO including the applicant's Wilton Provisions;
- Option 5 - make the DCO including a hybrid of SABIC's and the applicant's Wilton Provisions

expressing itself content with the first and third options; also to the second, subject to paragraph 1.2.3 of its submission regarding excision of all the Wilton land so as not to leave the TPEP and Brine Pipe unprotected [REP-541].

6.4.139 SABIC's responses to the applicant's Statement of Reservations, and its reply to the Rule 17 questions and to Sembcorp's Deadline X (2 February 2015) submission were submitted at Deadline XI (4 February 2015) [REP-548] and were entirely consistent with its previous submissions.

The applicant's response

6.4.140 A response to the issues raised at the 13 November 2014 hearing was given orally at that hearing and in REP-373. The applicant's case explaining the need for compulsory acquisition was also submitted in REP-327.

6.4.141 Following the 4 December 2014 hearing, at which the applicant's overall case for compulsory acquisition was examined and tested by the Panel, the applicant submitted a summary of the hearing [REP-424] and also made written submissions in respect of Deed of Grant [REP-418] and Restrictive Covenants [REP-419].

6.4.142 A response to the issues raised at the 13 January 2015 hearing was given orally at that hearing and submitted in REP-466. The applicant further provided its proposed wording for the Wilton Provisions and stated that its case relevant to compulsory acquisition is that:

- the DCO powers should be capable of exercise subject to the Wilton Provisions; and
- the additional control proposed by the Wilton parties puts the delivery programme at risk and may deter funders [REP-471]

6.4.143 In its Deadline IX (27 January 2015) response to the Panel's Rule 17 question 17-20, the applicant confirmed [REP-502] that its preferred Wilton Provisions had been submitted to the Panel within version 7 of the draft DCO at Deadline IX (27 January 2015) [REP-499, REP-500]. The applicant also acknowledged that various issues of principle remained outstanding: these were submitted separately by the applicant as a Statement of Reservations at Deadline X (2 February 2015) [REP-537].

6.4.144 In its Deadline X (2 February 2015) response to the Panel's Rule 17 question 17-31, the applicant argued against excising the Wilton section of the cable route from the DCO [REP-539] on the basis that:

- its draft protective provisions (as included in version 7 of the draft DCO) provide proportionate, robust and enforceable mechanisms for addressing the legitimate concerns about the effect of the project on operations at Wilton;
- SABIC's current rights are not exclusive; and
- its proposed Wilton Provisions strike the right balance between public benefit and private loss

6.4.145 In its Deadline X (2 February 2015) response to the Panel's Rule 17 question 17-32, the applicant acknowledged the important private interests that will be affected by its proposal, and that the continued safe operation of SABIC's Cracker is in the public interest [REP-539].

6.4.146 However, the applicant submits that there is a balance to be struck between the national public interest of its proposal and the public and private interests in the SABIC operation at Wilton, and in its response to question 17-32 quantifies the potential socioeconomic benefits of the project. The applicant also states that it has engineering confidence that the works proposed in the vicinity of SABIC's interests can be undertaken to SABIC's satisfaction and that the issue before the Panel is not "either/or" [REP-539].

6.4.147 The applicant made its final submission to the Panel by way of a response to SABIC's Deadline X (2 February 2015) submission [REP-547] at Deadline XI (4 February 2015). In its response, the applicant stated that the project could be delivered with the SABIC requirements (albeit that these subordinate the national interest and that there are safeguards preventing improper exercise of the DCO powers), but not if part of the cable route is excised. The applicant also appended a further and final draft version of its Wilton Provisions.

Panel consideration

6.4.148 The Panel undertook an accompanied site inspection to view the land on 15 October 2014 [REP-070, HR-015].

6.4.149 The Panel has also given careful consideration to the submissions made by SABIC and to the responses from the applicant.

6.4.150 Although some progress was made during the examination period, as set out in its consideration of the Sembcorp objection above, the Panel observes that it is apparent that the core differences in position between the applicant and SABIC in respect of the Wilton Provisions remain.

6.4.151 The Panel notes that the applicant acknowledges the public as well as the private interest in the continued safe and economic operation of the SABIC site in the Wilton complex.

6.4.152 The disagreement is where and how the balance between the public benefit of the applicant's proposal and of SABIC's operations, and the private loss to SABIC's operations at Wilton, including existing and planned employment, is to be struck.

6.4.153 The Panel finds that, when considering the impact of a proposal on employment, greater weight should be attached to existing employment than to the potential employment that might arise as a result *(London Thames Gateway Development Corporation (Bromley-by-Bow) (South) Compulsory Purchase Order 2010 (Appeal Reference LDN 023/E5900/005/003 paragraph 10.44).*

6.4.154 The Panel has considered the three approaches outlined in question 17-31 in its Rule 17 letter dated 29 January 2015 [PD-050].

6.4.155 In respect of approach 1, the Panel does not accept SABIC's argument that the adverse impacts from the development as a whole outweigh its benefits as a whole [s104 (7) PA 2008]. The Panel has identified in its consideration of Sembcorp's similar submissions that the benefit to be derived from the application proposal and that to be derived from the continued operation and development of the Wilton Complex, of which SABIC and its cracker form a very substantial part are equivalent in weight.

6.4.156 In respect of approach 2, the Panel observes that on balance the benefits of the project as a whole outweigh the adverse impacts; however, in respect of the Wilton Complex the Panel also observes that SABIC's argument is sound and backed by evidence to support the position that the adverse impacts on SABIC's operation need to be addressed. However, the Panel is clear that the best means to achieve this will be through the medium of protective provisions in Schedule 8 Part 6 of the DCO, in respect of the drafting of which SABIC has made substantial submissions.

6.4.157 In respect of approach 3, the Panel finds that a change may be made to the draft DCO to address the concerns raised by SABIC without recommending refusal of the application as a whole (DCLG's letter to the IPC dated 28 November 2011 (the Bob Neil letter) and the test in *Bernard Wheatcroft Limited v Secretary of State for the Environment (1982) 43 P & CR 233*) apply.

6.4.158 The Panel has given careful thought to the degree of engineering confidence associated with the potential impact of the applicant's

proposal on SABIC's operations, and to whether compulsory acquisition for the section of the cable route through the Wilton Complex should be excised from the Order. For the same reasons as set out in relation to Sembcorp above, the Panel finds this to be a disproportionate response in view of the benefits of the applicant's proposal as a whole, when the concerns expressed can be managed by protective provisions.

6.4.159 The Panel has reached this position because it is recommending protective provisions that will control the adverse effects of compulsory acquisition on the SABIC operation. The applicant's proposals for the cable corridor as a whole are acceptable subject to satisfactory protective provisions which safeguard SABIC's interests while enabling the project as a whole to proceed.

Panel findings in respect of shared concerns raised by affected persons

6.4.160 Section 6.3 (paragraphs 6.3.27 - 6.3.42) above records shared themes that arose from individual submissions on compulsory acquisition but that relate to more than one individual submission. Having considered all individual submissions, the Panel now reaches conclusions in respect of these shared themes.

6.4.161 In respect of whether the cable routes employed ***the most efficient alignments***, the Panel agrees that the applicant has had to take account of a substantial number of constraints on the siting of cable routes. Reasonable alternatives have been considered. The proposed alignments take a carefully planned route across largely undeveloped land that has successfully minimised the adverse effects of this type of development in an area that contains extensive residential, industrial and infrastructure development. The Panel considers that it is not possible to reduce the extent of CA powers sought, by modifications to the scheme. In particular:

- the proposed landfall site has been carefully selected for engineering and environmental deliverability, avoiding land within the North York Moors National Park, cliffs to the south of Marske-by-the-Sea and minimising the impact on tourism and recreation to the north at Redcar and to the south at Marske-by-the-Sea and Saltburn;
- the proposed onshore alignments avoid urban residential and industrial developed areas and have also been routed to avoid the new Kirkleatham Memorial crematorium;
- the proposed onshore alignments avoid heritage assets and wildlife sites; and
- the proposed onshore alignments minimise the need to cross major roads and railways and use HDD for those crossings that are required, minimising disruption to the strategic transport network

6.4.162 In respect of ***the amount of land sought***, the Panel agrees that:

- onshore cable corridor widths have been minimised, and are governed by a careful appraisal of the space requirement for the construction process proposed for each particular location;
- narrower corridors have only been employed where a specific land constraint has made this essential (for example to address the issues raised by the development of the GrainCo land); and
- narrower corridors in general would necessitate substantially increased haulage and off-site stockpiling of overburden which in turn would generate additional adverse impacts that will be avoided with the amount of land sought.

6.4.163 In summary terms, the applicant has reduced the compulsory acquisition land take to the minimum consistent with efficient delivery of a cable construction project. The Panel therefore finds that the case is made that all of the land is needed and is no more than is reasonably required is proposed to be compulsorily acquired.

6.4.164 In respect of ***the seeking of freeholds***, the Panel agrees that there are understandable concerns from a number of affected persons at the applicant's decision to seek freehold interests in respect of cables serving a generating use that apparently has a defined life due to the duration of its Crown lease.

6.4.165 However, the Panel observes that the applicant has sought to justify seeking freehold interests because:

- there is no certain legal means of obtaining and securing a term of years or other interest less than a freehold interest using compulsory acquisition under PA2008;
- without a clear legal underpinning for land requirements, the deliverability and hence financing of projects becomes uncertain;
- it is efficient for there to be a consistent legal basis for compulsory acquisition powers in respect of all land required for cable alignments (although it should be noted that the Panel does not accept this position within the Wilton Complex, a matter that is returned to in section 6.4 below);
- the operational life of the offshore wind farm assets is not necessarily limited to the proposed duration of the Crown lease and nor is it in the national interest for it to be artificially constrained to this duration by the terms of its onshore compulsory acquisition provisions;
- freeholds are sought as a 'backstop' power, should private treaty arrangements not be concluded or fail; and
- the developer / OFTO would offer any acquired freehold interest in respect of land where cable is to be buried back to the original freeholder, subject to easements to protect the interests of the OFTO in the operation, maintenance and decommissioning of the cable: the applicant only proposes to acquire freehold interests permanently where surface installations, such as converter stations, would remain in situ.

6.4.166 There are circumstances in which cable installation projects have proceeded under agreements that transfer less than freehold interests. However, the Panel is satisfied that the proposed requirement for freehold interests in this case is justified, in order to provide a clear and consistent legal and financial framework within which the proposed projects can be delivered should private agreements not be concluded or fail.

6.4.167 In respect of ***disruption to farming,*** the Panel agrees that:

- the alignments avoid existing farmhouses, agricultural yards and barns; and
- the alignments are routed as close as is feasible to field boundaries, thereby minimising agricultural severance, access problems and production difficulties

6.4.168 The Panel accepts that cable alignments are not particularly agile. It is not efficient for them to change direction often, as repeated changes to avoid relatively minor constraints will result in an increase in land take overall and result in the taking of more land in aggregate than is reasonably required. One landowner's benefit can lead to multiple landowners' and society's loss. It is often technically infeasible for cable alignments to change direction repeatedly over short distances as there are limits to the turns that cables and supporting infrastructure can make. The Panel observed a number of circumstances in which the routes would sever a small triangular section of a field, or create difficulties with tramway cultivation.

6.4.169 However, the Panel is satisfied that the applicant has used its best endeavours to minimise these adverse effects, and finds that the resulting harm is substantially outweighed by the benefits of the application proposal. The Panel also notes the applicant's submission that compensation will be available to parties that suffer agricultural harm.

6.4.170 Much of the cable alignment over agricultural land crosses relatively low lying areas. Watercourses and field drainage will be intersected. Whilst it is proposed to cross watercourses using HDD to minimise disruption, field drains will require reinstatement.

6.4.171 The two-project Bizco model may mean that one phase of reinstatement is followed by a second. The Panel notes the disruption that this will cause to farming operations but again accepts the applicant's submissions that the harm done has been limited to the extent feasible, allowing for the delivery of the application proposal in two projects. The benefit derived from the application proposals significantly outweighs this element of disruption, which is also a matter than can be addressed in part through the compensation process.

6.4.172 The Panel notes concerns about consequential failures in field drainage that is intersected on two different occasions. The DCO provides for

monitoring and, where necessary, remedial works to such drainage lines and this issue is provided for in requirement 24.

6.4.173 In respect of ***constraints on development potential*** alleged by agricultural affected persons who considered that they ought to be able to bring about urban development on their land and that this is being frustrated by the NSIP proposal, the Panel agrees that:

- the applicant has generally avoided urban land and land identified in the local plan as proposed for future urban development;
- whilst several individual landowners have ambitions for the future development of their land traversed by alignments, none of these ambitions has yet become sufficiently well-defined to acquire significant weight in planning terms;
- in most instances, affected persons could not point to development plan proposals or to extant grants of planning permissions that reinforced their submissions about development potential and so the Panel places very limited weight upon these; and
- the location of operational cables would constrain future development potential to some extent.
-
- Taken together in relation to development potential and constraints, these factors demonstrate that the private loss of development potential is outweighed by the public benefit flowing from the application proposal.

6.4.174 Other issues raised in relation to development potential are essentially individual and site specific issues to which further attention is paid in the consideration of individual submissions above.

Other matters relating to individual land interests

6.4.175 There were two compulsory acquisition matters which initially appeared to arise from objections, but on examination turned out not to be objections to compulsory acquisition. These were in respect of land in the ownership of:

- Northumbrian Water Limited; and
- Redcar and Cleveland Borough Council

Northumbrian Water Limited (NWL)

6.4.176 The NWL affected freeholds are recorded in the Book of Reference [REP-497, REP-498] in respect of land on the foreshore (plot 1) and land on an access road to a NWL wastewater treatment works off Redcar Road near Blacks Bridge (plots 11, 12A-C, 13A-D, 14, 15 and 16). Land on the foreshore (plot 1) is special category land as public open space.

6.4.177 Following its receipt of notice under s56 PA2008, NWL made a written representation regarding the protection of its assets [REP-047].

6.4.178 On 20 August 2014, NWL entered into a statement of common ground with the applicant [REP-113] in which it was noted (paragraph 3.1) that the following matters were to be addressed on an agreed basis:

- that NWL was a statutory undertaker under section 8 of the Acquisition of Land Act 1981;
- an option agreement and Deed of Grant in respect of NWL affected freeholds; and
- protective provisions in respect of NWL assets
- The only significant outstanding matter related to compensation, which is not a matter for this examination.

6.4.179 When Carter Jonas first appeared at the compulsory acquisition hearing on 13 November 2014 acting for Lord Ronaldshay, it indicated that it also acted for NWL, who (contrary to the position apparent from the SoCG), were said to object to compulsory acquisition. It understood at that point that NWL was a statutory undertaker for the purposes of s127 PA2008. On 26 November 2014 it was confirmed in writing that Carter Jonas acted for NWL [REP-383].

6.4.180 NWL was invited by the Panel to attend and to make representations at the issue-specific hearing on 2 December 2014 (Matter E) to clarify its statutory undertaker status and objection, but did not attend, was not represented and did not make any written representation in lieu of attendance. At the DCO issue specific hearing on 3 December 2014, the Panel was also interested to establish whether NWL had any concerns with the proposed protective provisions in the draft Order. Again, NWL did not attend, was not represented and did not make any written representation in lieu of attendance.

6.4.181 Carter Jonas attended for NWL at the 4 December 2014 compulsory acquisition hearing, but its representation was carried forward to 13 January 2015 alongside other late requests to be heard that it was not possible to accommodate in that business day once the business of those who had requested to be heard on time had been addressed.

6.4.182 The position began to move back towards that documented in the statement of common ground in Carter Jonas' Deadline VII submission for NWL (11 December 2014) [REP-392]. This suggested that s127 PA2008 did not apply to NWL and that NWL was not a statutory undertaker listed in section 8 of the Acquisition of Land Act 1981 for the purposes of this examination.

6.4.183 On 6 January 2015, in preparation for the 13 January 2015 compulsory acquisition hearing, NWL wrote to the Planning Inspectorate in respect of the proposed protective provisions applicable to it (Schedule 8). It confirmed that it was content with these and would make no further representations [REP-457].

6.4.184 At the 13 January 2015 hearing, it was also confirmed by the applicant that the NWL access road adjacent to Blacks Bridge is required by the applicant for access purposes only and that no other rights are sought.

Carter Jonas representing NWL confirmed that this was satisfactory and that NWL had no further submissions to make. Carter Jonas did not provide a written summary of its oral representations at this hearing and so reference is made to the applicant's written summary of oral submissions and to the digital recording of the hearing [REP-466, HR-057].

6.4.185 The special category land status of plot 1 was not a matter to which NWL made reference in any of its representations and hence there is no outstanding objection on this point.

6.4.186 All representations from NWL relating to compulsory acquisition, protective provisions and statutory undertaker status for the purposes of s127 PA2008 were therefore withdrawn [REP-457]. Subject to sustaining the Schedule 8 provisions as agreed, no further action is required in respect of representations from and for NWL.

Redcar and Cleveland Borough Council (RCBC)

6.4.187 RCBC affected freehold is recorded in the Book of Reference [REP-497, REP-498] in respect of land on the foreshore (plots 2A, 2B) and various highway land at road crossing points (plots 3A, 3B, 4i, 4ii, 11, 12A-C, 17A, 17B, 18, 25A, 25B, 26A, 26B, 32A, 32B, 36A, 36B, 43A, 43B, 54, 62A, 62B, 63A, 63B, 64, 65, 75 and 78). Land on the foreshore (plots 2A, 2B) is special category land as public open space.

6.4.188 In its Local Impact Report, RCBC expressed itself to be in support of the applicant's proposal [REP-073]. RCBC entered into a statement of common ground at Deadline II (28 August 2014) [REP-087] with no matters unresolved and intending to conclude a commercial agreement with the applicant.

6.4.189 Responding to the Panel's first round of written questions [REP-164], RCBC stated that there was no concern that the proposed development was contrary to policy contained within the NPPF, the draft Local Plan, nor the LDF.

6.4.190 As with the NWL matter reported above, during the 13 November 2014 compulsory acquisition hearing when representing Lord Ronaldshay, Carter Jonas stated that it also represented RCBC who were said to object to compulsory acquisition.

6.4.191 The Panel requested formal confirmation and representations by Deadline VI (20 November 2014), and these were provided [REP-308].

6.4.192 At the 4 December 2014 hearing, the Panel requested confirmation that RCBC was content with the proposed mechanism through which the draft DCO article 9 would secure funding for compulsory acquisition. RCBC did not attend the hearing at that time. Confirmation was provided by the applicant by way of a statement of common ground at Deadline VII (11 December 2014) with no matters unresolved [REP-416].

6.4.193 Carter Jonas acting for RCBC [REP-308] stated in its Deadline VII submission (11 December 2014) that RCBC does not now oppose the applicant's compulsory acquisition proposals [REP-392]. This was broadly confirmed in oral representations at the 13 January hearing by Carter Jonas representing RCBC. Carter Jonas did not provide a written summary of its oral representations at this hearing and so reference is made to the applicant's written summary of oral submissions and to the digital recording of the hearing [REP-466, HR-057].

6.4.194 At the hearing, it was clarified that the main purpose of the oral representations made was to ensure that it was understood that:

- RCBC would prefer to conclude a voluntary agreement, rather than have any of its land subject to compulsory acquisition; and
- RCBC is satisfied that the loss of public access to foreshore land (plots 2A and 2B) is temporary during construction and that no objection or requirement for replacement land arises from this.

Panel findings

6.4.195 The Panel observes that NWL is content with the applicant's proposed protective provisions and that NWL is satisfied that the access road is only required for access by the applicant and that no other rights are sought.

6.4.196 The Panel also observes that RCBC supports the applicant's proposal, intends to conclude a commercial agreement with the applicant (and would prefer to do so in preference to compulsory acquisition) and is content with the proposed mechanism for securing funding for compulsory acquisition.

6.4.197 There are no remaining matters of relevance to the SoS's consideration of the compulsory acquisition elements of this application that arise from Carter Jonas' representations on behalf of NWL and RCBC.

6.5 FUNDING

6.5.1 The applicant has prepared and submitted with its application proposal a Funding Statement [APP-030] which provides details of the funding which is in place both for the implementation of the projects and for the acquisition of the land and rights over land necessary to achieve this.

6.5.2 The funding required will ultimately come from the parent companies of the individual Bizcos (see paragraphs 6.3.12 to 6.3.17 above), and will be made available on the basis that each of the projects to be authorised by the DCO can or will be undertaken separately.

6.5.3 The applicant subsequently submitted a revised proposal in respect of securing funding for compulsory acquisition compensation [REP-254], changing the funding mechanism from a unilateral planning obligation

to a guarantee, further commercial clarification of the Bizco structure and funding arrangements [REP-328, 330] supported by a revised Funding Statement [REP-370].

6.5.4 The applicant has shown how the funds both to implement the projects and to acquire the necessary land and rights over land can be made available. There are no outstanding objections to the proposed means of funding or its security.

6.5.5 The Panel therefore observes that funding considerations do not present a barrier to compulsory acquisition proceeding as recommended.

6.6 STATUTORY UNDERTAKERS

6.6.1 Section 127 PA2008 relates to circumstances in which statutory undertakers object to the provisions of a DCO relating to their operational land and objections are not withdrawn. Section 138 PA 2008 relates to the removal of apparatus and the extinguishment of rights relating to statutory undertakers.

6.6.2 The applicant has negotiated with statutory undertakers during the examination and provided an audit of progress to the Panel at Deadline V (23 October 2014) [REP-255]. The statutory undertakers' have withdrawn their representations.

6.6.3 Reference must be made to the NWL submissions reported upon above. Whilst there was some doubt in the minds of its professional representative as to whether it was a statutory undertaker, the effect of this was removed when that organisation clarified that, following satisfaction with protective provisions and clarification that the only effect on its rights related to the sharing of an access road with the undertakers in a manner that would not affect its ability to exercise its rights or apparatus, its submission was withdrawn [REP-457].

6.6.4 With respect to ss 127 and 138 PA2008, the Panel is satisfied that there are no remaining issues that require to be addressed in the SoS's decision.

6.7 SPECIAL CATEGORY LAND

6.7.1 Section 132 PA2008 relates to circumstances in which there are proposals to acquire land or rights in relation part of a common, open space or fuel or field garden allotment - 'special category land'.

6.7.2 The only special category land identified in the Book of Reference is a beach - public open space between the coast road and the foreshore landfall site, shown on the Onshore Special Category Land Plan [REP-526] submitted at Deadline IX (27 January 2015) and included in the Book of Reference (plot 1 in respect of Northumbrian Water Limited and plots 2A, 2B in respect of Redcar and Cleveland Borough Council).

6.7.3 There are no objections to the effect of the application proposals on this land, which is accepted as being temporary for the duration of works, after which full public access would be restored. There are no proposals or requests for replacement land.

6.7.4 With reference to the applicable test in s132 PA2008, the Panel is satisfied that subsection (3) applies namely:

6.7.5 '[T]he order land, when burdened with the order right, will be no less advantageous than it was before to the following persons —

(f) the persons in whom it is vested, .
(g) other persons, if any, entitled to rights of common or other rights, and .
(h) the public ...'

6.7.6 The panel recommends that the tests in s132 (3) are satisfied due to the temporary nature of the use sought and the situation of the affected plots within an extensive open foreshore context, of which it only forms a small part.

6.8 CROWN LAND

6.8.1 Section 135 (2) PA2008 provides that an order granting development consent may include provisions applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

6.8.2 The application was accompanied by an Offshore Land Plan, drawing number F-OFL-MA-804 [APP-011], making clear that (as is normal for offshore wind farm development) all sea bed within the proposed development consent order area is Crown Land. There is no Crown Land onshore affected by the applicant's proposal.

6.8.3 The Crown Estate requested to be registered as an interested party [REP-005] and stated that the applicant holds an agreement for lease from The Crown Estate for the areas of seabed to be occupied by the project: The Crown Estate will issue a lease to the applicant in due course subject to it obtaining development consent.

6.8.4 On 21 January 2015 the Panel put a Rule 17 question (R17-19) to the applicant asking it to seek and provide evidence of an unconditional Crown consent to the draft DCO provisions under PA2008 s135(2). The applicant responded at Deadline X (2 February 2015) [REP-536] to say that it had engaged with The Crown Estate on the subject by issuing The Crown Estate with the final draft DCO as submitted at Deadline IX (27 January 2015).

6.8.5 The Crown Estate made a submission in response to question R17-19 at Deadline X (2 February 2015) [REP-544] stating that the Crown Estate Commissioners have reviewed version 7 of the draft DCO submitted by the applicant and stated:

'[t]he Commissioners are therefore satisfied that the Crown Rights wording is correct, and that any other provisions of the Draft DCO which is subject to section 135(1) or 135(2) of the Planning Act 2008 remaining materially as stated in the Draft DCO are correct.'

6.8.6 However, this submission indicates that the Crown Estate did not express its consent in unconditional terms. The SoS will need to secure an unconditional agreement from the Crown before making a decision on the application.

6.9 TEMPORARY POSSESSION

6.9.1 The DCO includes provision for temporary possession in article 29 and Schedule 6. Affected persons objected to compulsory acquisition. There were no objections to temporary possession. The extent of land sought temporarily by the applicant was relatively limited. On the basis that the case for development is made out, the Panel recommends that the proposed temporary possession should be granted.

6.10 HUMAN RIGHTS

6.10.1 The Panel considered throughout the examination and in its subsequent reasoning whether any rights provided under the Human Rights Act 1998 and derived from the European Convention on Human Rights are engaged by the application proposal and if so engaged had been breached. This process has been applied to all affected persons, land and land interests, regardless of whether a specific concern was raised about the breach of rights.

6.10.2 The Equality and Human Rights Commission is named as a statutory consultee. Its letter dated 21 August 2014 in response to the Panel's Rule 8 letter of 11 August stated that … *'it is generally not the Commission's practice to respond … unless the application raises a clear and substantial equality and human rights concern …'* [REP-152].

6.10.3 The Human Rights Act 1998 (HR1998) gives effect to rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) together with additional and related rights. HR1998 Schedule 1 Part I contains the Convention Rights and Freedoms (Articles 2 to 14 and 16 to 18) and Part II contains the three Articles to the First Protocol.

6.10.4 The rights which are engaged here are:

- section 6 - acts of public authorities (not a Convention right); and
- article 6 of the Convention - the right to a fair trial; and
- article 8 of the Convention - the right to respect for private and family life; and
- article 1 of the First Protocol - protection of property

HR section 6 - acts of public authorities

6.10.5 Section 6(1) of HR1998 states that 'It is unlawful for a public authority to act in a way which is incompatible with a Convention right.' Section 6(2) disapplies section 6(1) … 'if

(i) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
(j) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with Convention rights, the authority was acting so as to give effect or to enforce those provisions'

6.10.6 This provides the foundation stone for the duty on the Panel and the SoS to apply engaged Convention rights.

6.10.7 In the context of the application, the DCLG Guidance[30] states that a compulsory acquisition should only be agreed where there is a compelling case in the public interest.

ECHR article 6 - the right to a fair trial

6.10.8 Article 6 of the Convention relates to the right to a fair trial and states that 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'

6.10.9 In the context of the application, there has been extensive publicity and the applicant has engaged in a multi-stage consultation process which has continued through the examination and which is to a fixed timetable. All persons affected by the compulsory acquisition proposals have been notified of the applicant's proposal and have had the right to make representations to the Panel and to be heard at one of the Compulsory Acquisition hearings by the Panel, which has been appointed as the Examining Authority under section 65 of PA 2008.

ECHR article 8 - the right to respect for private and family life

6.10.10 Article 8 of the Convention states that 'Everyone has the right to respect for his private and family life, his home and his correspondence.' with the proviso that 'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of … the economic well-being of the country …'

6.10.11 In the context of this application, which has a demonstrated needs case, interference with the Convention rights is confined to a limited

[30] Planning Act 2008 - Guidance related to procedures for the compulsory acquisition of land: Department for Communities and Local Government, September 2013

number of persons in the interests of the economic well-being of the country and most importantly, no dwellings are affected.

First Protocol article 1 - protection of property

6.10.12 Article 1 of the First Protocol relates to protection of property and states that

'Every natural or legal person is entitled to peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest, or to secure the payment of taxes or other contributions or penalties.'

6.10.13 In this case, the Order which may deprive certain persons of their property is being promoted by the applicant in the public interest and in accordance with the law, in particular section 122 of PA 2008 and the draft DCO compensation provisions. Again, there is a demonstrated needs case providing justification as described in paragraph 6.9.10 above.

6.10.14 The Panel concludes that the purposes of the application proposal are sufficient to justify interference with the rights derived from the HR1998 reported on above through the grant of the DCO and by way of the exercise of compulsory acquisition powers under it. Where individual submissions addressed human rights considerations, these are drawn out in section 6.4 below.

6.11 COMPULSORY ACQUISITION CONCLUSIONS

6.11.1 The Panel's on compulsory acquisition matters are stated in the following paragraphs.

6.11.2 The applicant has sought a commencement period of 7 years rather than 5 years. On the facts before the Panel in this case as set out from paragraph 6.3.19, it has been satisfied that the case for an extended commencement period is made out, having regard to its effects on compulsory acquisition affected persons.

6.11.3 The Panel is conscious that the SoS's decision in respect of the related application for Dogger Bank Creyke Beck did not support a 7 year commencement period for reasons that related to the duration of uncertainty affecting land and rights required for onshore cable alignments. However, the Panel is also conscious that this was a decision on particular facts and that the reasoning of the SoS was not available to the applicant and IPs in this case for consideration and comment.

6.11.4 With the exception of certain land within the Wilton Complex, a clear case has been made for compulsory acquisition of land and rights over land in relation to the HVDC and HVAC cable alignments from the landfall to the proposed point of grid connection, including the converter stations. The public benefit provided by the application proposal significantly outweighs the individual harm occasioned by compulsory acquisition.

6.11.5 In relation to submissions that a clear case had not been made for the compulsory acquisition of land and rights over land inside the Wilton Complex to provide for HVDC and HVAC cable alignments, the Panel has concluded that such a case has been made. However, it has only done so in the context of its recommendation of protective provisions in Chapter 7 below that would have the effect of ensuring that the rights and existing and planned activities of the owners, tenants and operators at Wilton are not unduly disrupted.

6.11.6 The Panel is satisfied that funding for the proposed compulsory acquisition would be in place and available were the DCO to be granted.

6.11.7 Matters arising from PA2008 Part 7 Chapter 1 relating to special category land and to statutory undertakers have all been resolved. They provide no barrier to the proposed compulsory acquisition.

6.11.8 The Crown has granted conditional consent to the content of the DCO relating to Crown interests in its latest form: but that consent will need to become unconditional before the SoS decision is taken.

6.11.9 Relevant human rights protected by HR1998 are engaged, but the purposes of the application proposal are sufficient to justify interference with these through the proposed compulsory acquisition powers.

6.11.10 The Panel **finds** as follows in respect of ***relevant tests*** applicable to proposals for compulsory acquisition.

- Compulsory acquisition powers can only be granted if the conditions set out in sections122 and 123 of the PA2008 are met.
- Section122 (2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate. The Panel has addressed this test in sections 6.3 and 6.4 above.
- Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not

mean that the compulsory acquisition proposal can be considered in isolation from the wide consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process. The Panel has found that the need case for the application and its compliance with NPS EN-1, EN-3 and EN-5 establishes the public benefit is sufficient to outweigh the public loss, in all instances of compulsory acquisition other than those relating to the Wilton Land and the Wilton Complex. That being said, the Panel is satisfied that that that with protective provisions that it recommends at Schedule 8 Part 6 in Appendix A, the public benefit is sufficient to outweigh the public loss within the Wilton Land and the Wilton Complex as well.

- Section 123 requires that one (or more) of three conditions is met by the proposal. The Panel is satisfied that the condition in s.123 (2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised in respect of all land with the exception of the land proposed to be included in order to replace the GrainCo land. In respect of that land, the Panel is satisfied that the condition in s.123 (3) is satisfied.
- The Panel is satisfied that he applicant has undertaken a robust evaluation of the land requirements and the routes proposed for the onshore cable alignments and related development.
- All reasonable alternatives to compulsory acquisition, including modifications to the project, have been explored.
- For a project of this scale, complexity and national importance, there is no reasonable alternative to the use of compulsory acquisition powers to underpin the general deliverability of cable corridors over private land in many ownerships, should private treaty arrangements either not be concluded or fail.
- The proposed interference with the rights of those with an interest in the land to provide for the transmission of a substantial volume of renewable electricity from a NSIP to meet an assessed national need set out in NPS EN-1 is for a legitimate purpose and is necessary and proportionate.
- The applicant has demonstrated and explained a clear rationale and plans for the use of the land which is to be acquired.

Funding and human rights considerations relevant to compulsory acquisition are examined separately in later sections of this chapter below.

6.11.11 The Panel **concludes** in respect of these general concerns that the onshore cable route alignments are well planned, being as short and taking as little land as is feasible given the constraints within which the applicant has had to operate. None of these concerns of themselves gives rise to a reason that the proposed compulsory acquisition of any land should not be confirmed. This conclusion is set out here for clarity, but it should be noted that it has been reached having had full regard to the individual matters recorded in section 6.4 below. In addition, it should also be noted that the Panel's specific

reservations in respect of the Wilton Land, also discussed in section 6.4 below, do not relate to whether the case for compulsory acquisition is made out, but rather the means by which the undertaker would put its compulsory acquisition and related powers into effect.

7 THE DEVELOPMENT CONSENT ORDER

7.0 INTRODUCTION

7.0.1 This chapter of the report addresses the draft Development Consent Order (DCO). It contains two main parts:

- **Part 7.1: From the application to the applicant's Preferred Revised Draft DCO** summarises changes proposed during the early part of the examination, up to and including the DCO issue-specific hearings and publication by the Panel of a revised Draft DCO (based on version 6) on 23 December 2014 taking issues raised and comments into account [REP-426].
- **Part 7.2**: **Towards the recommended Draft DCO** addresses a second stage, in which the Panel sought written representations from the applicant and IPs on the applicant's Preferred Revised Draft DCO (v7) that it issued with commentary at Deadline IX on 27 January 2015.

7.0.2 The main issues addressed in this chapter relate to the absence of agreement between the applicant, SABIC and Sembcorp (the Wilton parties) about a range of matters requiring provision in the DCO including compulsory acquisition and the protection of the Wilton Complex.

7.0.3 Towards the end of the examination it became apparent that significant points of principle remained outstanding between the applicant and the Wilton parties. These issues related to the cable alignments through the Wilton Complex, the management of the potential effects of the application proposal on operations at Wilton (in particular SABIC's operations) and the settlement of protective provisions for Wilton operators.

7.0.4 The Panel continued to encourage dialogue between the applicant and the Wilton parties to remove or narrow the remaining points of difference. Once it became likely that agreement would not be reached, the Panel requested final position statements from the applicant and each Wilton party by the close of the examination. Moving towards the close of the examination, the Panel also issued a final round of questions. These set out a range of possible decisions that the Panel might make ahead of a recommendation to the SoS. This process enabled all IPs (but particularly the applicant and the Wilton parties) to review and respond to a range of possible outcomes that the Panel might recommend to address the absence of agreement and provide their views upon them.

7.0.5 These final statements and the responses to the final questions form the basis of the Panel's Recommended Draft DCO, which is included as Appendix A to this report.

7.1 FROM THE APPLICATION TO THE APPLICANTS PREFERRED DRAFT DCO

7.1.1 The applicant submitted a 'submission draft' DCO [APP-028] and explanatory memorandum [APP-029] with the application, which formed the version 1 DCO.

7.1.2 The Panel's examination approach for the DCO was to hold an Issue-specific Hearing on 16 October 2014 into the strategic purpose and structure of the DCO early in the examination, to aid shared understanding [HR-004][HR-011-013]. DCO-relevant issues were then tested through further hearings and drawn together finally in a second Issue-specific Hearing on the DCO on 3 December 2014, where detailed drafting and unresolved concerns were examined [HR-033][HR-040-044].

7.1.3 Relevant representations, written representations, responses to the Panel's written questions, the statement of common ground process and oral examination all led the applicant to propose a range of iterative amendments to the DCO to address issues that had been raised. Written representations up to Deadline VII on 11 December 2014 responded to the DCO-related issues that were raised in hearings.

7.1.4 The IPs raising concerns at this stage were as follows.

- **The Marine Management Organisation** (MMO) [REP-015] commented on the Draft DCO and Draft DMLs in section 2 of its relevant representation. It disagreed with certain definitions used and suggested alternative or additional text should be added to certain sections. It identified areas requesting further clarity, for example in Part 1 Article 8(7) where it suggested a condition should be inserted under benefit of the order stating that 'the undertaker shall consult the MMO prior to transferring to another person relevant provisions pursuant to an agreement under paragraph (1)', addressing its significant concern about the potential for the benefit of the DCO and DMLs to be subdivided beyond the array sectors A and B provided for in the application documents.

- The MMO submission for Deadline IV [REP-198] stated that it had significant concerns regarding the current DCO and DMLs and that it was currently 'not fit for purpose'. Reasoning was provided in Appendix 1 of this correspondence. A representation made at Deadline V [REP-287] confirmed that the concerns raised at Deadline IV remained. The MMO explained its preferred position regarding transfer of the benefit of the order. This was expanded on in a representation for Deadline VI [REP-311], which highlighted concerns regarding article 8 and the partial transfer of DMLs proposed by the applicant.

- The MMO representation for Deadline VII [REP-451] recorded that some concerns had been resolved following meetings between the MMO and the applicant to discuss the transfer provisions in article 8. However, these concerns were by no means resolved.

- **Network Rail Infrastructure Limited** [REP-022] commented on protective provisions within the draft DCO. This representation was subsequently withdrawn following the agreement of wording in the protective provisions with the applicant [REP-296] and the concern can be viewed as settled.

- **National Grid Electricity Transmission** (NGET) [REP-036] commented that it required protective provisions to be included within the DCO to ensure that its apparatus is adequately protected. Further representations were submitted at Deadline V [REP-283], Deadline VI [REP-316] and Deadline VII [REP-384]. The outstanding matters essentially were that commercial side agreements needed to be entered into and detailed changes to the DCO to give effect to the agreement on protective provisions were required.

- **Natural England's** (NE's) [REP-041] relevant representation at section 7 directs the applicant to their written representation for Dogger Bank Creyke Beck, saying that 'the Teesside A&B DCO/DMLs should reflect amendments made to the DCO/DMLs for the Creyke Beck project'.

- The NE representation at Deadline III [REP-132] states, in section 6.6.28, that 'it would be beneficial wherever possible for the DCO/DML to reflect the requirements/conditions agreed for the Dogger Bank Creyke Beck projects'. Section 3 of its representation for Deadline IV [REP-232] commented on the updated DCO/DMLs and confirmed that it had engaged in discussions with the applicant and the MMO. Section 7 of its representation for Deadline V [REP-286] provided updated comments on the draft DCO.

- Section 7 of its submission for Deadline VI [REP-310] commented on version 4 of the applicant's draft DCO, welcoming many of the comments and amendments made. Section 2 of its Deadline VII submission [REP-448] requested the inclusion of provisions within version 6 of the draft DCO to secure natural environment performance and mitigation measures. Finalisation of agreed approaches to the securing of mitigation remained as a matter for the second phase of the examination.

- **English Heritage** [REP-044] requested amendments to the DCO at the end of their relevant representation. Their representations for Deadline VI [REP-307] and Deadline VII [REP-447] provided further comment on the draft DCO, seeking revisions to the provisions for the written scheme of investigation in the DMLs. Finalisation of agreed approaches to the securing of the WSI remained as a matter for the second phase of the examination.

- **Sembcorp and SABIC** (the Wilton parties) expressed significant concerns about the effects of compulsory acquisition and about the need for and content of protective provisions for the operation of the Wilton Complex. These are matters that are set out in much fuller terms further below.

- Sembcorp's concerns were set out in its response to Deadline VI [REP-314], Deadline VII [REP-402]. SABIC's submission for Deadline III [REP-295] provided comments on the Draft DCO. It is fair to record that much of the detail of these concerns did not become concrete until the second stage of the examination, when SABIC became a more active participant.

- **The Crown Estate** relevant representation [REP-005] and its submissions for Deadline VI [REP-382] sought changes in relation to Crown rights.

7.1.5 The following paragraphs summarise the applicant's proposed changes from Version 2 of the DCO (used as the basis for the strategic hearing on 16 October) to Version 6 of the DCO (used as the basis for the detailed hearing on 3 December 2014). The Panel requested the applicant to maintain a DCO change log at all stages of the examination. Reference to this log is provided alongside the analysis of each successive iteration below.

The applicant's iterations of the DCO

7.1.6 Version 2 DCO [REP-137] (Change log [REP-139]) updated version 1 (at NE's request) to reflect the Creyke Beck Draft DCO in its final form at the end of its separate examination, to ensure compliance with the Statutory Instrument template and improve presentation and definitions. Network Rail agreed protective provisions were included and it became the basis on which oral examination was conducted on 16 October 2014.

7.1.7 Version 3 DCO [REP-214] (Change log [REP-216]) corrected errors identified by the applicant and responded to matters raised in oral examination and included an amendment to the order limits (Plot 58B and 58F).

7.1.8 Version 4 DCO [REP-251] (Change log [REP-253]) included clarification of the responsibilities of the MMO and changes to ensure that the SoS receives and certifies the following plans and documents:

- outline Code of Construction Practice;
- draft fisheries liaison plan;
- In Principle Monitoring Plan; and
- outline post construction maintenance plan.

The Panel had identified these as key to securing environmental mitigation.

7.1.9 Version 5 DCO [REP-374] (Change log [REP-376]) set out changes that were being considered regarding consent to transfer benefit of the Order to address the MMO's concerns.

7.1.10 Version 6 DCO [REP-426] (Change log [REP-428]) corrected errors identified by the applicant and responded to further matters raised in oral responses given at hearings, together with matters arising from relevant representations, written representations and statements of common ground were then used to develop an Examining Authority commentary on the draft DCO, which aimed to take all outstanding matters raised up to that point into account. This was published as the Consultation Draft DCO [PD-048 on 23 December 2014. Submissions on the form and content of the DCO that the Panel might recommend were sought.

7.1.11 A period until 19 January 2015 was provided for the submission of written representations on the Consultation Draft DCO [PD-048], following which the applicant was requested to provide a consolidated preferred draft DCO, taking full and reasoned account of all matters raised in the examination up to that point. This was provided as DCO Version 7 [REP-499-501], the content of which is addressed in detail in section 7.2 below.

7.1.12 On the basis that, all IPs and other persons participating in the examination were provided with opportunities to participate in oral hearings, to comment on the Consultation Draft DCO [PD-048] and in turn were able to respond to DCO Version 7 [REP-499-501], the Panel is satisfied that iterations of the draft DCO prior to Version 7 have to a large extent passed into history. We do not analyse those documents in any further detail here.

7.2 TOWARDS THE RECOMMENDED DRAFT DCO

7.2.1 This part sets out the Panel's detailed reasoning on the DCO as recommended together with all changes proposed to be made to it, in response to issues which arose from Panel's Consultation Draft DCO [PD-048] responses to that consultation by IPs and further written representations that raised DCO-relevant matters after the DCO consultation had taken place.

7.2.2 It takes account of representations made for Deadline VIII (19 January 2015) by the applicant [REP-467-468], a draft DCO Version 7 [REP-499-500] and change log [REP-501] prepared in response to the consultation draft DCO. The applicant sought to address as many of the outstanding concerns from the first stage of the examination as they considered that they were able to address in DCO Version 7.

7.2.3 A significant number of the changes fall into the following types:

- non-substantive changes, to place the DCO into conformity with the Statutory Instrument template;
- non-contentious or non-substantive changes to remedy minor technical drafting concerns which do not materially affect the examined proposal; or
- confirmation of non-contentious changes proposed by the Panel in the notes to our Consultation Draft DCO, for example to confirm references to a plan or drawing.

7.2.4 The DCO version 7 became what is referred to below as the applicant's preferred draft and changes to it from the Panel's Consultation Draft DCO are all addressed below.

7.2.5 The applicant also submitted an updated Hierarchy of Offshore and Onshore Plans that are referred to within the DCO, many of which secure mitigation [REP-494].

7.2.6 In addition to the applicant, the following IPs made submissions that responded to the Panel's DCO consultation and these are also taken into account in the Panel's reasoning.

Responses to the draft as a whole

- **MMO**
- Submissions from the MMO providing comprehensive commentary on the draft DCO, with particular reference to the DMLs [REP-459][REP486][REP-533].
- **The Crown Estate**
- Submissions from The Crown Estate providing commentary on the draft DCO and addressing the question of Crown consent to the provisions of the DCO [REP-482][REP-544].

Responses relating to the natural environment and mitigation measures

- **NE**
- Submissions from NE providing commentary on the draft DCO and noted no wish to make further submissions at Deadlines X and XI [REP-462][REP-485][REP-542][REP-549].

Responses relating to protective provisions

- **Northumbrian Water Ltd (NWL)**

- Submissions from NWL seeking to resolve protective provisions [REP-383].

- **National Grid Electricity Transmission (NGET)**
- Submissions from NGET, seeking to resolve commercial agreements and protective provisions [REP-458][REP530][REP-543].

Northern Powergrid (North East) Ltd (NPG)
- Submissions from NPG, confirming resolution of commercial agreements and withdrawing outstanding representations [REP-531].

Responses relating to the Wilton Complex

- **Sembcorp**
- Submissions from Sembcorp in respect of compulsory acquisition and protective provisions for the Wilton Complex [REP-483][REP-540][REP-550].

SABIC
- Submissions from SABIC in respect of compulsory acquisition and protective provisions for its plant in the Wilton Complex [REP-463][REP-487][REP-541][REP-548].

Final responses from the applicant

- Submissions responding to the MMO with post preferred draft DCO changes [REP-546]; and
- Submissions responding to Sembcorp (and SABIC) with post preferred draft DCO changes [REP-547].

7.2.7 Some of the issues raised in these submissions address progress in ongoing negotiations between the applicant and IPs about matters of detail where there is relatively little contention. For example, submissions from NWL, NGET and NPG record progress towards agreement on protective provisions and commercial agreements. The major outstanding subject matters subject to unresolved contention after the submission of the applicant's preferred draft DCO are as follows:

- matters relating to marine construction and operation and the DMLs, raised by the MMO;
- matters relating to securing decommissioning, raised by the Panel and NE; and
- disputed provisions for the Wilton integrated petrochemical facility (the Wilton Complex), affecting the interests of freeholders Sembcorp and major plant operators SABIC.

7.2.8 These are addressed immediately below on a subject matter basis. This part then concludes by consideration of the remaining provisions of the draft DCO that have been the subject of any outstanding

concern by the Panel or IPs, taken in part and schedule order. Recommendations for changes are made in respect of those matters that applicant's preferred draft DCO has not addressed.

Marine Considerations

7.2.9 The MMO made submissions following its consideration of the Consultation Draft DCO and the applicant's preferred draft DCO [REP-459] expressing concern at the applicant's proposed approach to:

- article 2 (interpretation) and related matters of interpretation;
- article 8 (transfer of benefit); and
- article 10 (power to make agreements).

At the core of each of these concerns was the view that the applicant was providing a level of flexibility in the DCO that was not warranted and that would provide the MMO with insufficient certainty as to who (at any one time) would be responsible for the development or operation of the application proposal. If transfers of benefit were to take place, the MMO considered that it needed a means to know who would be responsible for construction or operation as the case may be and in turn was subject to the benefit and burden of the Order or parts of it.

7.2.10 The power to make agreements was an equivalent concern, as this supports the ability of the undertakers / Bizcos to assign duties and benefits between themselves by agreement.

7.2.11 The applicant set out its response [REP-503] which the Panel has considered. This largely acceded to the MMO's definitional concerns and set out a range of amendments that have been included in the applicants preferred draft DCO.

7.2.12 On article 8 the applicant strongly resisted, basing its view on the approach taken to the transfer of benefit in the Hornsea One made Order. For commercial and risk control reasons, the applicant wishes to be able to transfer all or part of the benefit of the order including all or part of the benefit of a DML - in effect meaning that the application proposal might be subdivided into tranches smaller than array A and array B, within those works areas.

7.2.13 The Hornsea Order provides that the undertaker, with the consent of the SoS may transfer to another person any or all of their benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights.

7.2.14 The examining authority's report of findings and conclusions for Hornsea Project One noted:-

"... if it is legal then it should not be refused, but must be made a practicable proposition. The ExA's view is that the applicant's final proposals for Article 34 make this both practicable and transparent,

and therefore recommends this drafting to the SoS" (Paragraph 8.39 - extracted from [REP-503]).

7.2.15 It followed in the applicant's view that there was no good reason to prevent or restrict the transfer of benefit. It was content to amend article 8 to clarify that the MMO must be given the following information about a transfer of benefit:

- the name and contact details of the person to whom the benefit of the powers have been transferred or granted;
- the date on which the transfer took effect;
- the powers transferred or granted;
- pursuant to paragraph (4), the restrictions, liabilities and obligations that apply to the person exercising the powers transferred or granted;
- where relevant, a plan showing the works or areas to which the transfer or grant related; and
- a copy of the consent effecting the transfer or grant from the SoS.

7.2.16 The Panel considers that the extent of this information (provided in the applicant's preferred draft DCO) is sufficient to enable the MMO to discharge its planning and regulatory obligations, without unduly restricting the undertakers' commercial opportunities to deliver the application proposal in the best means available at the time. Anything less than the amendments suggested by the applicant would appear to run counter to the reasoning on transfer of benefit in the Hornsea One decision which the Panel agrees is applicable to the circumstances here. The Panel recommends the applicant's proposed changes and does not consider the more restrictive provisions proposed by the MMO are warranted. The application proposal is of a very substantial scale and the physical and financial risks to which developers are exposed in the marine environment are substantial. Without the flexibility sought by the applicant, the Panel considers that there would be a significant reduction in the commerciality and deliverability of the application proposal.

7.2.17 Other matters on which the MMO sought reassurance and changes to the DCO were addressed by the applicant's preferred draft DCO in a manner that appeared to the Panel to fully meet the MMO's concerns.

Natural Environment, Decommissioning and Mitigation Considerations

7.2.18 NE were largely content with the provisions of the DCO as set out in the Panel's Consultation Draft [REP-462] to secure all mitigation that it had advised was necessary.

7.2.19 There was outstanding concern related to the securing of offshore decommissioning, an important matter given the significance for HRA purposes of decommissioning within the Dogger Bank SCI [REP-462]. It was necessary to secure that any installation within the SCI was

enduring but temporary to ensure that the conservation objective for the SCI could be met.

7.2.20 The Panel's starting point in its consultation had been that whilst it was important to ensure that NE was satisfied that appropriate decommissioning arrangements were secured, decommissioning is also a process that is subject to special statutory provisions under the Energy Act 2004 and for which a separate EIA would also be undertaken.

7.2.21 The Panel considered that it was important that any agreed approach to decommissioning satisfied NE on this point, whilst not fettering the discretion of the SoS under section 105 of the Energy Act 2004. Section 105(8) of the 2004 Act sets out the mandatory elements of a decommissioning programme. These include (d) which provides that 'if it [the decommissioning programme] provides that the relevant object will be wholly or partly removed from a place in waters regulated under this Chapter, must include provision about restoring that place to the condition that it was in prior to the construction of the object'. On its face, a provision compliant with s105(8) (d) of the 2004 Act would appear to sufficient to address the needs of the suggested Dogger Bank SCI mitigation measures.

7.2.22 NE responded as follows:

'Natural England also wishes to provide clarity regarding the ExA's comment in relation to the '*reinstatement of environmental conditions' as part of decommissioning in order to address the mitigation required for the Dogger Bank SCI. The view of Natural England is that environmental quality is currently 'unfavourable'. There are currently no guidelines as to what environmental conditions a 'restored' site will be and therefore it is not appropriate to place conditions on the applicant to achieve this through remedial site restoration. The act of removal of installed equipment at or above the seabed and associated installation impacts, subject to EIA/AA at the time of decommissioning, will exclude an AEoI of the site, but will in itself not inhibit the ability of the site to recover to its natural state, whatever that is deemed to be.*'

7.2.23 In this context, NE advised that:

'[b]oth parties [NE and the applicant] agreed that [the] detail of decommissioning within the Dogger Bank SCI should be provisioned within the Outline Decommissioning Statement. Natural England and the applicant have worked together to amend the Outline Decommissioning Statement to include this provision. A re-drafted version will be submitted by the applicant at Deadline VIII and this plan is to become a named document within the DCO.'

7.2.24 The Panel has reviewed the applicant's preferred Outline Decommissioning Statement version 6 [REP-491]. It is satisfied that decommissioning within the Dogger Bank SCI has been provisioned

there. It has reviewed the applicant's drafting in requirement 15 which provides that '[t]he submitted scheme shall accord with the principles set out in the Outline Decommissioning Statement.' It is satisfied that the security for decommissioning is present, but that the subsequent discretion of the SoS under the 2004 Act has not been fettered.

7.2.25 Finally, on a separate matter, NE made clear that it is content that all plans required to secure appropriate mitigation have been captured in the DMLs. However, it requested that all plans which have been referred to within the DMLs that have not been defined, should be so defined. The applicant's preferred draft DCO has included provision in each DML defining the relevant plans. Having had sight of these changes, NE confirmed that it had no further submissions to make.

7.2.26 The Panel is satisfied that the recommended draft DCO addresses NE's concerns, without a requirement for any further changes.

The Wilton Provisions

7.2.27 The most significant element of dispute around the development of the DCO in the examination process related to the development of protective provisions for the Wilton Land and Wilton Complex. The applicant, Sembcorp and SABIC (the Wilton Parties) were able to reach broad agreement that protective provisions (the Wilton Provisions) were necessary (DCO Schedule 8 Part 6). However, as is recorded in Chapter 4 above, at the end of the examination there was still substantial disagreement on the precise form which those provisions should take. Whilst the Panel encouraged negotiations between the parties and held hearings seeking agreement, it became clear that full agreement could not be achieved by the examination closing date.

7.2.28 The Panel's approach to this disagreement in DCO terms was to ensure that:

- the applicant had stated its preferred form of the draft Wilton Provisions;
- the Wilton Parties had equivalently stated their preference in an alternative form of the draft Wilton Provisions;
- the differences between these and positions and the reasons for them were understood by the parties and by the Panel;
- each party made a 'statement of reservations' in which the matters on which there was outstanding disagreement were made clear;
- at the same time, a Rule 17 question process was used to explore the parties views on a wide range of alternative solutions that the Panel could consider.

It follows that all IPs and affected persons to whom the Wilton Provisions were relevant had a full and fair opportunity to make their case on the development of these provisions to the Panel. This in turn

ensures that, whilst the Panel makes recommendations below in respect of protective provisions that were not fully agreed by the applicant or the Wilton Parties, there are no aspects of the provisions as recommended by the Panel that have not been considered by both the applicant and the Wilton Parties.

7.2.29 The Panel commenced its consideration of the DCO provisions by considering whether the nature of the disagreement between the applicant and Wilton Parties was so substantial that it would not be possible to put forward Provisions of any description as a matter of principle, and so the Order would have to fail. Neither the applicant nor the Wilton Parties agreed that this was the case. The Panel is satisfied that meaningful and effective Wilton provisions can be included in a recommended Order.

7.2.30 In such circumstances, the Panel has made recommendations that adjudicate between the position of the applicant and the positions of the Wilton Parties. Its starting point has been the applicant's preferred draft Wilton Provisions as set out in DCO v7 [REP-499]. The Panel has recommended amendments drawn from the Wilton Parties representations [REP-540, 541, 547, 548 and 550], whilst also taking full account of the applicant's responses to these [REP-536, 537, 539 and 547].

7.2.31 As is set out in Chapter 4 above, in the light of these submissions, the Panel agreed as follows.

- Changes to the applicant's preferred draft Wilton Provisions are required to address the important and relevant concerns raised by the Wilton Parties, enabling existing operations, employment, chemical production and economic benefit to be protected, which we find to be important and relevant and upon which we have placed substantial weight.
- However, these changes must not be of a magnitude that leaves the undertakers with an un-implementable Order and projects (because if they were of this magnitude, then the Panel would not consider it appropriate to recommend that the Order be made in such terms).

7.2.32 The Panel's recommended changes in summary are as follows.

- The Wilton Parties sought to dis-apply the Order powers conferred by article 15 (temporary stopping up of streets), article 16 (access to works), article 18 (discharge of water), article 20 (authority to survey and investigate the land), article 22 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (private rights of way), article 28 (rights under or over streets), article 29 (temporary use of land for carrying out the authorised project) and article 30 (temporary use of land for maintaining the carrying out the authorised project) ("the identified powers") unless consent in writing has been obtained from the relevant Wilton party.

- The Panel agrees with this request, but on the basis that such consent must not be unreasonably withheld (a provision to which the Wilton parties were prepared to agree).
- Having regard to the applicant's statement of reservations, the Panel considers that it is then very important to ensure that the Wilton Provisions specify that the undertakers may refer the question of consent unreasonably withheld to an expert person for determination. It should be noted that the applicant and the Wilton parties both agreed on the necessity of providing for expert determination to resolve disputes under these provisions - they did not reach final agreement as to what powers would be within the scope of this person's appointment. What the Panel recommends to be now paragraph 19 achieves this outcome.
- The Wilton Parties draft Wilton Provisions sought the inclusion of decision guidelines for the expert person, essentially to ensure that Wilton operational and economic considerations must be taken into account, whilst also balancing these against a requirement that the undertakers operational and economic considerations must equally be taken into account. The applicant had opposed the Wilton draft on this point, but the Panel agrees that it is necessary for the expert person to be required to consider these matters. If they do so however, the Panel also considers that the decision guidelines must be reasonable and balanced and must equally require the expert person to have regard to the undertakers powers to deliver a NSIP and the significance of the application proposal.
- The applicant was concerned that if the Wilton Parties obtained a consent process to be discharged before the undertakers could exercise any of the identified powers, the Wilton Parties could subject the application proposal to unreasonable delay.
- To address this, the Panel has recommended what amounts to a right of appeal benefiting the undertakers. In circumstances where a Wilton Party does not respond to and decide a consent application after thirty days, the undecided application for consent is deemed to have been unreasonably withheld and can be referred to the expert person for determination. In this way, the Wilton Parties cannot frustrate the project.
- The Panel has agreed with the applicant's proposal that there should be a time limit on operation of the expert's jurisdiction of sixty days. This is again to ensure timeliness and reduce the risk of delay to the application proposal.
- The applicant and the Wilton Parties both agreed that an expert determination would be final and binding, unless there was a 'manifest error' in its outcome. The Panel considers that is is important to ensure that a dispute about what constitutes 'manifest error' does not lead to uncertainty. For this reason, it recommends that in any such instance, arbitration under article 44 of the DCO would be the means to finally address any such dispute.

7.2.33 The Panel's recommended provisions accede to Sembcorp's request in oral hearings that the undertaker should join the existing Wilton noise

liaison committee, as its works and operations would be perceived by neighbouring residents as ‘Wilton’ problems. This appears to be a reasonable request, without which there will be activities within Wilton that are accounted upon to this committee, and other activities which are not. This is provided in paragraphs 14 and 15 of the provisions.

7.2.34 Using these means, the Panel agrees that it is appropriate to enable all Part 3 and Part 5 powers in the DCO to be capable of being exercised in the Wilton Land and Wilton Complex, once consent for their exercise has been applied for and granted. The potentially harmful effects of the applicant’s unalloyed exercise of these powers on the Wilton operations has been made subject to an expert resolution process that would apply before any of the powers identified in the first bullet point of paragraph 7.2.32 above could be exercised. This would provide greater certainty to the Wilton Parties than the applicant’s alternative, which would have left the powers subject to ‘best endeavours’ provisions requiring the undertakers to consider Wilton Parties interests and avoid harm to them.

7.2.35 The applicant's best endeavours provisions 'to minimise , as far as reasonably practicable' the effect of the operation of the unalloyed versions of " the identified powers" (as set out in the DCO version 7 in paragraph 3, are recommended to be removed from the draft DCO. This is because they would leave the Wilton Parties subject to the substantial concern that the identified powers could be used without an expert determination of the justification for project delivery arrangements that would harm the manufacturing capability at Wilton and the economic benefit flowing from it, which that Panel has found to be relevant and important.

7.2.36 A worst case scenario would be that an undertaker seeks consent to commence the operation of say article 25(compulsory acquisition) powers in Wilton and the relevant Wilton Party refuses consent or fails to deal with the application within thirty days. The undertaker would then either change the delivery timetable and arrangements to address the concerns raised (accepting them as reasonable) or refer the matter to the expert for determination (as unreasonable or undetermined). Sixty days after a reference to the expert there would be a binding decision taking account of the concerns raised and mitigations sought by the Wilton party and the public interest in the Wilton operations as well as the public interest justification for the applicant’s request.

7.2.37 Only if the expert were to make what all parties refers to as ‘manifest error’ would there be any further delay, and there the Panel recommends that it is necessary for article 44 to apply and to deliver a final and binding determination shortly thereafter.

7.2.38 It appears that these recommended amendments address the Wilton Parties’ concerns and provide a clear means whereby these can be taken into account before the identified powers are used by the

undertaker, but would not provide any significantly likelihood of substantial delay or uncertainty in the project.

7.2.39 The Panel recommends that the DCO should be revised to include Schedule 8 Part 6, the Wilton Provisions, as set out in Appendix A.

Other Protective Provisions

7.2.40 In addition to the submissions about and after the Consultation Draft DCO made by the Wilton parties, second stage written representations about relevant protective provisions were made by Northumbrian Water Ltd (NWL)[REP-383], National Grid Electricity Transmission (NGET)[REP-458][REP530][REP-543] and Northern Powergrid (North East) Ltd (NPG)[REP-531]. Each of these bodies reached agreement with the applicant over the protection of their interests and these agreements are reflected in the applicants preferred draft DCO.

7.2.41 There are no protective provisions in relation to civil and military aviation, ports and harbours, shipping and navigation. However, there are no outstanding concerns from the CAA, the MoD, any airport or aviation undertaking, port, harbour, shipping or navigation undertakers. The Panel is satisfied that no additional provisions on these subject matters are required.

The Remaining Provisions of the DCO

7.2.42 The remainder of this part addresses the draft DCO components as follows:

- articles (articles 1 - 44);
- authorised development (Schedule 1, Part 1);
- ancillary works (Schedule 1, Part 2);
- requirements (Schedule 1, Part 3);
- access and street works (Schedules 2, 3 and 4);
- compulsory acquisition and temporary possession (Schedules 5 and 6);
- form and function of the DMLs;
- generation assets DMLs (Schedule 7, Parts 1 (A and B) and 2 (A and B)); and
- transmission assets DML (Schedule 7, Parts 3 (A and B) and 4 (A and B)); and
- protective provisions (Schedule 8).

Articles
(articles 1 - 44)

7.2.43 The principal powers proposed to be granted in the draft DCO articles are as follows:

- to carry out the authorised development (including associated development) and ancillary works relating to the construction of two offshore wind farms (project A to be delivered by Bizco 2 and

project B to be delivered by Bizco 3) grid connections and shared works (the authorised project) within the order limits;
- to maintain the authorised project;
- to operate the authorised development for generating and transmitting electricity;
- to discharge agreements for consent, agreement or approval under a requirement via a relevant planning authority and to apply section 78 and 79 of the Town and Country Planning Act 1990 to appeals in respect of refusals, non-determinations or conditional grants;
- to transfer the benefit of the order including the benefit of the DMLs (subject to the SoS's consent);
- to extinguish public rights of navigation over the physical location of wind turbine generators and the offshore substation;
- to deem the grant of four separate marine licences (the DMLs) for generation and transmission assets for project A and for generation and transmission assets for project B;
- to make guarantees for the financial provision associated with compulsory acquisition and ensure that these are met by the relevant Bizco and approved by the local planning authority before the exercise of any compulsory acquisition powers;
- to enable agreements on the apportionment of works and entry onto land between the Bizcos;
- to dis-apply byelaws made under Schedule 25 to the Water Resources Act 1991, s66 to the Land Drainage Act 1991 and the provisions of the Hedgerows Regulations 1997 and s6 of the Party Wall etc Act 1996;
- to provide defences in relation to statutory nuisance proceedings in respect of noise under s82(1) of the Environmental Protection Act 1990;
- to authorise street works associated with the construction of grid connection cable crossings and other associated development onshore, including temporary stopping of streets, acquiring access to works and making agreements with street authorities;
- to discharge water, undertake protective works to buildings, survey and investigate land and remove and re-inter human remains associated with the construction of grid connections and other associated development onshore;
- to compulsorily acquire land and rights over land and streets and statutory undertakers' land needed for the construction of grid connections and other associated development onshore;
- to use land temporarily for the maintenance of the project;
- to do works to trees subject to Tree Preservation Orders and to fell or lop other trees; and
- to deem Marine Licences under MACAA 2009.

7.2.44 These powers are subject to:

- a power for the SoS to serve an abatement notice requiring the undertaker to repair, restore or remove any abandoned or decayed works;
- saving provisions for Trinity House and the Crown;

- the certification of plans, statements and the ES by the SoS;
- protective articles and provisions;
- a provision enabling arbitration (where necessary) by a person appointed between the parties or, failing agreement between the parties, by the SoS; and
- all relevant provisions in requirements and the DMLs.

7.2.45 The Panel makes observations below about the following articles:

- article 2 - definitions;
- article 6 - procedure in relation to approvals under requirements;
- article 8 - consent to transfer the benefit of the order;
- article 9 - guarantees in respect of payment;
- article 10 - power to make agreements;
- article 11 - disapplication and modification of legislative provisions;
- article 13 - defence to proceedings in respect of statutory nuisance;
- articles 19 - 21 - protective work to buildings, authority to survey and removal of human remains;
- all Part 5 articles - powers of acquisition;
- article 36 - trees subject to tree preservation orders;
- article 38 - felling or lopping of trees;
- article 40 - saving for Trinity House;
- article 41 - Crown Rights;
- article 42 - certification of plans and documents etc; and
- article 43 - protective provisions.

7.2.46 In relation to ***article 2*** - definitions:

- The applicant proposes to amend the definition of the "array area" to refer to refer to the 'Offshore Order Limits and Grid Coordinates Plan' [REP516-517]. This amended plan was submitted by the applicant to respond to the Panel's request for clarification of the functions of this plan necessary to define the application proposal and be submitted to the SoS. The Panel is content that the amended plan does not change that which was shown in the 'Order limits plan' originally referred to. The Panel recommends this change to the SoS.
- The applicant proposes to include a new definition of an "Array Location and Layout Plan" which the Panel agrees does not change that which was applied for, but assists by specifying offshore development. The Panel recommends this change accordingly.
- In the definition of "commence", the Panel expressed concern that the exclusion of onshore site clearance and demolition work from this definition could enable pre-commencement of works with substantial effects, before the submission of the phasing plan under requirement 17. The applicant agreed to remove demolition from the exclusions for the reason advanced by the Panel but sought to retain site clearance on the basis that this is necessary for some preparatory works. The Panel accepts this

reasoning and recommends the removal of demolition as proposed by the applicant, together with the insertion of 'be' before 'construed accordingly'.

- The Panel identified that the definition "HVDC" remained un-used in the remainder of the DCO and proposed its deletion. The applicant concurred. The Panel recommends this change accordingly.
- The applicant proposes to clarify the definition of the "land plan" to refer to the Land Plan Offshore and Onshore Land Plan, which improves the accuracy and consistency of plan referencing in the DCO. The Panel recommends this change accordingly.
- The Panel suggested that the definition of the "offshore Order limits plan" should be replaced with the "Offshore Order Limits Plan and Grid Coordinates Plan" (the title of the relevant submitted plan) and the "onshore Order limits plan" with the "Onshore Order Limits Plan and Grid Coordinates Plan" and all references in the DCO to these plans should be amended accordingly, for consistency between the Order and the submitted plans. The applicant agreed. The Panel recommends this change accordingly.
- The Panel suggested that the definition of the "Order limits" should refer consistently in both parts (a) and (b) to 'the authorised project' rather than to 'the authorised development' for part (b) (onshore), as this is a term that includes references to ancillary development, which is found both offshore and onshore. This appears to address an MMO concern [paragraph 1 REP-459] for greater clarity about this distinction. The applicant agreed the change. The Panel recommends this change accordingly.
- The Panel was concerned that a transport plan for the purposes of requirement 31 may need to be made for a port area that is in England and Wales but is not in the Redcar and Cleveland Borough Council area. It followed that there needed to be a definition "relevant planning authority for the port". The applicant agreed. The Panel recommends this change accordingly.
- The Panel was concerned that the term "restricted work area" is employed in the offshore works plans and is relevant to requirement 38 but is not defined. The applicant agreed to define it with reference to the offshore works plans. The Panel recommends this change accordingly.

7.2.47 The MMO [REP-459] had sought the inclusion of a definition of "completion" to assist it in determining when to migrate from consideration of the application proposal as development, to consideration of it as operational and for monitoring purposes. The applicant was concerned that such a definition was innovative, had not been employed in other offshore wind farm orders as made and was unnecessary. The Panel concurs and the applicant's drafting is unchanged.

7.2.48 The Panel had sought the inclusion of a revised definition of highway and highway authority to address changes in the status of the Highways Agency. The applicant sought legal advice and was satisfied that the original definition was sufficient. The Panel concurs.

7.2.49 The Panel had sought the inclusion of definitions of Wilton land, owners and operators to the extent that this would assist in the interpretation of the proposed Wilton Provisions. The applicant proposes that all relevant definitions would be dealt with separately in the Wilton Provisions - Schedule 8 Part 6. The Panel accepts this proposal.

7.2.50 The Panel had suggested that references to plans in the DCO and definitions of plans in article 2 should include the relevant plan numbers. The Panel had also made a number of suggestions for the clearer titling of plans. The applicant has accepted changes to plan titles in the interests of clarity, but has then made clear its view that as there are relatively few plans, the DCO is not assisted by reference to plan numbers: better defined titles will suffice. The Panel agrees.

7.2.51 In relation to ***article 6*** - procedure in relation to approvals under requirements, the Panel sought the inclusion of reference to the "relevant planning authority for the port" in relation to any consent, agreement or approval under a requirement on land in a port outside Redcar and Cleveland Borough Council area. The applicant supported this change. The Panel recommends this change accordingly.

7.2.52 In relation to ***article 8*** - consent to transfer the benefit of the order, the MMO had significant unresolved concerns. These are addressed in ***'Marine Considerations'*** above.

7.2.53 In relation to ***article 9*** - guarantees in respect of payment, the Panel was concerned to ensure that the form of guarantee provided was sufficient to address DCLG compulsory acquisition guidance (September 2013) and to ensure that compulsory acquisition affected persons could draw down sufficient funds at any time. The applicant initially proposed a development consent obligation as the means by which funds would be secured. This approach was revised in favour of a statutory guarantee under this article, under which Redcar and Cleveland Borough Council would review and agree the relevant guarantee or form of agreement and the quantum of funds and that the exercise of powers of compulsory acquisition could not commence until the Council had agreed form and quantum.

7.2.54 During the DCO Issue-specific Hearing on 3 December 2014, the Panel explored the possibility that the Council might need assistance and / or additional resources to assist it to determine whether a guarantee was in the right form or quantum. A planning performance agreement was investigated as a means of resourcing the Council to undertake this work. The applicant proposed the insertion of new article 9(4) which would commit the undertaker to providing information to the Council on the affected land or interests in land and sufficient to be

able to determine the adequacy of the guarantee or security. This would include the undertaker's assessment and the basis of assessment of the level of compensation to be included.

7.2.55 The Panel asked the Council to attend the Compulsory Acquisition Hearing on 13 January 2015 to address this point but it did not attend. The Panel also asked the applicant to provide documentary evidence that the Council had agreed to approve the approach suggested. The applicant drew the Panel's attention to correspondence to it from the Council dated 13 January 2015 [REP-475] which said:

- 'RCBC are supportive of the project, as per the submission of the Local Impact Report, and are of the view that they are competent to discharge all the requirements set out in the draft Order applicable to them as relevant planning authority for onshore matters.
- 'As documented in the Statement of Common Ground between RCBC and Forewind at Deadline VII (Appendix 14), the Council are of the view that they have supplied sufficient documentary evidence confirming agreement on Article 9 'Guarantees in respect of payment' (as confirmed at points 2-A-1 and 2-A-2 of the Statement of Common Ground).
- 'The Council can confirm that they are satisfied that they are competent and the appropriate authority to administer such a requirement, and at the point in time needed, they can call upon specialist resources to discharge this responsibility. The Council recognise that they can recover reasonable costs from Forewind/future project undertakers (ID 2-A-1 and 2-A-2 of the Statement of Common Ground) which can support in-house costs or the appointment of specialist advisors.'

It was not considered that the Panel need any further surety than that provided in the form of article 9 set out in the applicant's preferred draft DCO.

7.2.56 The Panel has considered the approach proposed by the applicant and supported by the Council and agrees that it is sufficient to ensure an appropriate form and quantum of a guarantee or other agreement to secure the funds needed for the payment of compensation for compulsory acquisition. It recommends the form of words in the applicant's preferred draft article 9 accordingly.

7.2.57 In relation to ***article 11*** - disapplication and modification of legislative provisions, the Panel is concerned to ensure that the disapplication of byelaws made under Schedule 25 to the Water Resources Act 1991, s66 to the Land Drainage Act 1991 and the provisions of the Hedgerows Regulations 1997 and s6 of the Party Wall etc Act 1996 are appropriate and necessary. In this regard, the Panel notes that there are no outstanding objections from any relevant company or authority or beneficiary of the provisions proposed to be disallowed. It questioned the need for the disapplication of the Hedgerows Regulations 1997 during the DCO Issue-specific hearing [HR-033] and

also undertook inspections of the intersections of the onshore cable alignments with hedgerows and walls to satisfy itself that the loss of these would be limited in extent and would not be a significant source of dis-amenity or other harm or require any special measures by way of additional mitigation.

7.2.58 The Panel is satisfied that the limited harm caused by the disapplication of these provisions is justified by the public benefit to be derived from the application proposal. .

7.2.59 In relation to ***article 13*** - defence to proceedings in respect of statutory nuisance (in respect of noise under s82(1) of the Environmental Protection Act 1990), the Panel is concerned to ensure that the establishment of this defence does not do unjustified harm to the interests of others. Agricultural IPs did raise some concerns about noise (as recorded in Chapter 6 above). The Panel has inspected the onshore cable alignment and is satisfied that this has been sited as far as possible to ensure that noise due to construction or maintenance does not lead to noise nuisance or noise prejudicial to health at sensitive (residential) receptors. The onshore cable alignments largely pass through open countryside or through heavy industrial areas (the Wilton Complex).

7.2.60 The Panel is satisfied that the limited harm caused by the provision of this defence is justified by the public benefit to be derived from the application proposal.

7.2.61 In relation to ***articles 19, 20 and 21*** - protective work to buildings, authority to survey and removal of human remains, there were no specific representations seeking amendments to these powers. Owing to the siting of the onshore cable alignments, there are few instances of the need to undertake protective works to buildings. The Panel is satisfied that the limited harm caused by the application of these powers is justified by the public benefit to be derived from the application proposal.

7.2.62 In articles 19, 20 and 21 the Panel does support the applicant's proposed change to clarify that these articles would apply to land and to any building lying within the 'Onshore Order Limits Plan and Grid Coordinates Plan'. As above, this is a clarifying change in plan title but does not change the Order land. The Panel recommends this change accordingly.

7.2.63 In relation to all ***Part 5 articles*** - powers of acquisition, the Panel addresses issues arising from the representations of the Wilton parties in its analysis of the **Wilton Provisions** above.

7.2.64 In relation to ***article 22*** - compulsory acquisition of land, the applicant proposes a technical amendment to address a concern by the Panel that the date on which a compulsory acquisition notice under s134(3) PA2008 is served is not the date at which a discharge of all rights (etc) should be achieved. The applicant proposes to delete that

reference from article 22(3) and to insert new articles 22(4) and (5) to distinguish between the date when notice of compulsory acquisition is served and the date when works commence, clarifying that it is the latter date when the discharge of all rights (etc) should be achieved. The Panel recommends this change accordingly.

7.2.65 In relation to ***article 25*** - compulsory acquisition of rights, the applicant proposes a technical amendment to articles 25(3) and (4) to clarify that the relevant Bizco 'may' exercise the power to acquire rights. As article 25(1) was already framed so as to provide that the undertaker 'may' acquire rights etc., this additional qualification does not affect the intention of the article but rather clarifies it. The Panel recommends this change accordingly.

7.2.66 In relation to ***article 29*** - temporary use of land for carrying out, and ***article 30*** - temporary use of land for maintaining the authorised project, the applicant seeks to delete article 29(11) which referred in error to the temporary use of land for maintaining the authorised project and a maintenance period of five years, adding the same words as article 30(11). The Panel recommends this correcting change accordingly.

7.2.67 In relation to ***article 31*** - statutory undertakers, in response to the Panel's concern about the absence of a definition for a public communications provider, the applicant proposes an internal definition clarification to provide that a "public communications provider" has the same meaning as in s151(1) of the Communications Act 2003. The Panel recommends this clarifying change accordingly.

7.2.68 In relation to ***article 36*** - trees subject to tree preservation orders and ***article 38*** - felling or lopping of trees, the Panel is concerned to ensure that the allowance of works does not cause unjustified harm to protected trees. It undertook inspections of the intersections of the onshore cable alignments with trees to satisfy itself that the loss of these would be limited in extent and would not be a significant source of dis-amenity or other harm or require any special measures by way of additional mitigation. There are no outstanding submissions objecting to these powers. The Panel is satisfied that the limited harm caused by the provision of this defence is justified by the public benefit to be derived from the application proposal. It **does not recommend** any changes to the applicant's preferred draft DCO or any additional mitigation.

7.2.69 In relation to ***article 41*** - Crown Rights, in a letter date 19 January 2015 [REP-482], the Crown Estate confirmed the form of words that it sought in this provision, specifying also that the reference to "Crown Land" in article 41(1)b should be to "Crown land". The Panel is satisfied that the article as proposed to be amended by the applicant meets the drafting requirements of the Crown Estate. The Panel recommends this change accordingly.

7.2.70 In relation to ***article 42*** - certification of plans and documents etc, the Panel requested the applicant to make a consistent and clarified list of plans by plan title that should be submitted to the SoS. The Panel is satisfied that the clarified list of plans is the appropriate list of plans to be submitted to the SoS. The Panel recommends this change accordingly.

7.2.71 In relation to ***article 43*** - protective provisions, the Panel suggested that Schedule 8 "to this order" has effect. The applicant concurred. The Panel recommends this change accordingly.

Conclusion on articles

7.2.72 Following on from the reasoning set out above, the Panel observes that the articles in the applicant's preferred draft DCO broadly enjoy the support of both the applicant and IPs. The Panel is satisfied that the proposed articles and the powers that they provide conform with policy set out in NPS EN-1 and EN-3. The Panel is satisfied that they are appropriate to the proposed use and development, proportionate to its needs and appropriately responsive to the needs of other users of the order area. On this basis, the Panel considers that the articles require those changes recommended here.

Authorised development
(Schedule 1, Part 1)

7.2.73 Chapter 2 above describes the authorised development provided for in the Order. There were no outstanding concerns about Schedule 1 Part 1 of the DCO at the end of the examination and the Panel recommends it without any changes from the applicant's preferred draft.

Ancillary works
(Schedule 1, Part 2)

7.2.74 There were no outstanding concerns about the ancillary works provided for in Schedule 1 Part 2 of the DCO at the end of the examination and the Panel recommends it without any changes from the applicant's preferred draft.

Requirements
(Schedule 1, Part 3)

7.2.75 Schedule 1 Part 3 of the draft DCO sets out the requirements that are proposed to apply to the development.

7.2.76 The Panel makes observations below about the following requirements:

- requirement 1 - interpretation;
- requirement 2 - time limits;
- requirements 3 - 12 - detailed offshore design parameters;
- requirement 13 - layout rules;

- requirement 14 - aviation lighting;
- requirement 15 - offshore decommissioning;
- requirement 16 - offshore safety management;
- requirement 17 - 19 - detailed design approval onshore;
- requirement 23 - highway accesses;
- requirement 24 - surface and foul water drainage;
- requirement 25 - archaeology;
- requirement 26 - code of construction practice;
- requirement 27 - construction environmental management plan;
- requirement 31 - construction traffic routing and management plans;
- requirement 32 - port access and transport plans; and
- requirement 39 - restricted work area.

7.2.77 In relation to ***requirement 1*** - interpretation, the Panel was concerned that the term "highway authority" was limited to mean the local highway authority when it should also include the Highways Agency and any successor body. The applicant agreed and revised the definition to refer to "the same meaning as in the 1980 Act" (as defined in article 2). The Panel agrees with this change and recommends accordingly.

7.2.78 In relation to ***requirement 2*** - time limits, the Scaife family raised concerns about the proposed seven year duration of the period for commencement as increasing the uncertainty to which compulsory acquisition affected persons are exposed beyond the normal period of five years. The Panel has considered the basis for the applicant's justification for this extended period in Chapter 6 above and supports it.

7.2.79 In relation to ***requirements 3 - 12*** - detailed offshore design parameters, the Panel is satisfied that these express the upper limit of the Rochdale Envelope as assessed in the ES.

7.2.80 In relation to ***requirement 13*** - layout rules, the Panel's and the MMO's concerns are addressed in **'Marine Provisions**' above.

7.2.81 In relation to ***requirement 14*** - aviation lighting, the applicant proposes changes to address the Panel's concerns about lack of precision in the earlier draft. The proposed replacement requirement is based on the drafting used in the Hornsea One made DCO, which clearly protects the interests of the CAA and the MoD. The Panel notes that the absence of any substantial concerns in terms of seascape and landscape impact justifies the absence of a maximum output control in candela. The Panel asked NE whether the absence of such a control would cause any concern for natural environment interests and received the response that it would not.

7.2.82 The Panel recommends the proposed replacement requirement.

7.2.83 In relation to ***requirement 15*** - offshore decommissioning, the Panel expressed the view that this requirement should assist in ensuring

that the physical effects of the application proposal on the Dogger Bank SCI are-long term but temporary. This in turn would entitle the SoS to reach the conclusion that there is no AEoI on the SCI in accordance with NE advice (see Chapter 5). The applicant recognised this need, but also indicated that nothing should be secured in the DCO that would pre-empt decision-making under the requirements of the statutory decommissioning regime set up under the Energy Act 2004 s105(2).

7.2.84 The applicant drew attention to the Outline Decommissioning Statement which notes that different decommissioning principles apply in the case of the Dogger Bank SCI for the reasons set out above. It proposes to tie this requirement to ensure that no offshore works may commence until a written decommissioning programme under the Energy Act 2004 s105(2) has been approved by the SoS. The change would add "[t]he submitted scheme shall accord with the principles set out in the Outline Decommissioning Statement".

7.2.85 The Panel is satisfied that this addresses the need to avoid AEoI on the Dogger Bank SCI, taking account of the fact that the Energy Act approval application will be accompanied by an ES and a HRA report. Flexibility is allowed to the SNCB of the day to form advice at that time about the precise approach to be taken to decommissioning. The Panel recommends accordingly.

7.2.86 In relation to ***requirement 16*** - offshore safety management, the Panel was concerned that the requirement as drafted might enable an Emergency Response and Cooperation Plan (ERCoP) to be prepared that was substantially different than that currently anticipated and also enabled the MMO to dispense with it, by way of a tailpiece "unless otherwise agreed in writing by the MMO…" The applicant has proposed revised drafting that ensures that an ERCoP must be retained and submitted for approval before the offshore development commences. The Panel supports this change.

7.2.87 In relation to ***requirement 18 - 19*** - detailed design approval onshore, the Panel again raised concerns about a tailpiece "unless otherwise agreed in writing by the relevant planning authority…" incorporated in both requirements and enabling flexible approval of revisions that (in the case of former requirement 19) could move beyond the ES and the Rochdale envelope. The applicant proposed to reverse these two requirements, to eliminate the tailpieces and to tie the submissions to plans approved by the SoS. The Panel supports this change and recommends accordingly.

7.2.88 In relation to ***requirement 23*** - highway accesses, the Panel was concerned that the requirement as drafted did not relate to access "to or from" a "public" highway or to provide that constructed accesses must be maintained. The applicant agreed and further proposed that accesses must be constructed, maintained "and removed" in accordance with the approved details. The Panel supports this change and recommends accordingly.

7.2.89 In relation to ***requirement 26*** - code of construction practice (CoCP), the Panel noted the absence of Highways Agency protective provisions and concerns from the Wilton Parties about HDD. The Panel had also expressed concern about the delivery of HDD beneath the railway at Blacks Bridge. It suggested that the CoCP should include method statements for HDD where Highways Agency assets, railways and Wilton plant assets are to be crossed. The applicant agreed and proposed to insert an HDD method statement for these three locations into the CoCP and also to require Highways Agency in addition to local planning authority approval as appropriate. The applicant agrees. The Panel supports this amendment and recommends accordingly.

7.2.90 In relation to ***requirement 31*** - construction traffic routing and management plans and what has become new ***requirement 32*** - port access and transport plans, the Panel expressed concerns in hearings that port related traffic and transport plans needed to be provided for in a manner that ensured they would still operate if the port was selected in a location outside Redcar and Cleveland Borough Council area. The applicant agreed and removed the port from the original requirement and proposed a separate construction traffic management plan (CTMP), construction travel plan (CTP) and transport access and transport plan, recognising that the latter may be in a different local authority area from the former two. The Panel supports this amendment and recommends accordingly.

7.2.91 In relation to ***requirement 38 -*** amendments to approved details, the Panel expressed concern about a double utilisation of the term 'material'. The applicant agreed that the first utilisation was superfluous and has removed it. The Panel supports this amendment and recommends accordingly.

7.2.92 In relation to ***requirement 39*** - restricted work area, the applicant has proposed an amendment to define this as "within 300m of the international boundary". The Panel agrees that this improves the precision of the requirement and recommends accordingly.

Conclusion on requirements

7.2.93 Following on from the reasoning set out above, the Panel observes that the requirements in the applicant's preferred draft DCO broadly enjoy the support of both the applicant and IPs. The Panel is satisfied that the proposed articles and the powers that they provide conform with policy set out in NPS EN-1 and EN-3. The Panel is satisfied that they are appropriate to the proposed use and development, proportionate to its needs and appropriately responsive to the needs of other users of the order area. On this basis, the Panel considers that the requirements require those changes recommended here and that these should be approved by the SoS.

Access and street works
(Schedules 2, 3 and 4)

7.2.94 The preferred draft DCO contains three relevant schedules:

- Schedule 2: streets subject to street works;
- Schedule 3: streets to be temporarily stopped-up; and
- Schedule 4: access to works.

7.2.95 In relation to ***Schedules 2, 3 and 4***, there are no specific objections to highway or right of way matters. The Highways Agency concluded a Statement of Common Ground with the applicant [REP-088] which indicated no outstanding matters. Redcar and Cleveland Borough Council equivalently concluded a Statement of Common Ground with the applicant [REP-087] which indicated no outstanding matters on traffic and access and a shared position on mitigation with the Highways Agency.

7.2.96 Royal Mail had outstanding concerns about traffic impacts and delays caused by the crossing of major roads [REP-197][REP-289]. The applicant issued a position statement [REP-266] addressing the concerns raised by Royal Mail within the framework agreed between it, the Highways Agency and Redcar and Cleveland Borough Council. It made clear that the main roads of concern to Royal Mail are all agreed to be crossed by HDD and that no direct traffic or congestion impacts are anticipated. Royal Mail was invited to address a hearing but did not attend. Royal Mail has not participated in the examination either orally or in writing since 23 October 2014 and did not respond to the Consultation Draft DCO.

7.2.97 The Panel has considered the outstanding concerns of Royal Mail. However, the evidence provided by the applicant's position statement [REP-266] addresses all remaining concerns by Royal Mail by clarifying that all major roads are to be crossed by HDD, which will not impede the passage of mail vehicles. The Panel does not consider that any additional mitigation or change to these schedules is required.

7.2.98 In Schedule 4, the Panel had expressed concern that references to the "A174" on line 3 and "Slip road off A174" on line 7 were insufficiently precise. The applicant has proposed changes in both cases to define more closely where the access to works are situated. The Panel agrees that this improves the precision of the Schedule and recommends accordingly.

Compulsory acquisition and temporary possession
(Schedules 5 and 6)

7.2.99 The preferred draft DCO contains two relevant schedules:

- Schedule 5: new rights (compulsory acquisition); and
- Schedule 6: temporary possession.

7.2.100 In relation to ***Schedules 5 and 6***, the compulsory acquisition case and individual concerns raised in relevant and written representations are addressed in Chapter 6 (compulsory acquisition) above. The Panel observed that chapter that all new rights sought in respect of land outside the secure perimeter of the Wilton Complex were justified with no additional controls and recommended accordingly. The Panel has also given policy and technical consideration to this schedule in the applicant's preferred draft DCO. No issues of policy or technical non-compliance arise. The Panel recommends this schedule generally as set out in the applicant's preferred draft DCO.

7.2.101 However, new rights sought by the applicant within the Wilton Land and Wilton Complex were not fully supported by the Panel in Chapter 6 (compulsory acquisition) above, on the basis that landowner and operator consent should be sought before such powers could be exercised in order to enable the balancing of NSIP considerations with other important and relevant considerations arising from the operation of the Wilton Complex. The Panel's reasoning on this issue is addressed above under the subject specific heading ***'The Wilton Provisions'***.

Form and function of the DMLs

7.2.102 Matters relating to the content of the generation assets DMLs (Schedule 7, Parts 1 (A and B) and 2 (A and B)) and the transmission assets DMLs (Schedule 7, Parts 3 (A and B) and 4 (A and B)) arose from the MMO and are addressed above under the subject specific heading '***Marine Considerations***'.

Protective provisions
(Schedule 8)

7.2.103 The preferred draft DCO contains six sets of protective provisions:

- Part 1: protection for electricity, gas, water and sewerage undertakers;
- Part 2: protection for Network Rail Infrastructure Ltd;
- Part 3: protection of electronic communications code operators;
- Part 4: protection for offshore cables and pipelines;
- Part 5: protection for the Environment Agency; and
- Part 6: the Wilton Provisions.

7.2.104 In relation to ***Schedule 8 Part 1***, submissions have been received from NWL, NGET and NPG (the distribution network operator). These are fully addressed above under the subject specific heading ***'Other Protective Provisions***'. There were no other submissions in respect of this part. No other changes have been proposed that would materially affect the interests of any of the beneficiaries of this part. The Panel has reviewed and is otherwise satisfied with the Schedule 8 Part 1 protective provisions. No issues of policy non-compliance arise. The Panel recommends them as set out in the applicant's preferred draft DCO.

7.2.105 In relation to ***Schedule 8 Part 2***, submissions have been received from Network Rail Infrastructure Ltd [REP-022][REP-296]. There were no other submissions in respect of this part.

7.2.106 The most recent submission was from Network Rail Infrastructure Ltd prior to the issue of the Consultation Draft DCO. An email of 4 November 2014 from that body's in house legal counsel [REP-296]) confirms that, with the inclusion of words after Schedule 8 Part 2 Paragraph 6(1)(b): 'in such manner as to cause as little damage as is possible to railway property; and…' in the protective provisions, Network Rail Infrastructure Ltd has no further concerns and withdraws its objection to the DCO. The requested words are present in the applicant's preferred draft and the recommended DCO. No other changes have been proposed that would materially affect the interests of Network Rail Infrastructure Ltd.

7.2.107 The Panel has reviewed and is otherwise satisfied with the Schedule 8 Part 2 protective provisions. No issues of policy non-compliance arise. The Panel recommends them as set out in the applicant's preferred draft DCO.

7.2.108 In relation to ***Schedule 8 Part 3***, no submissions have been received. The Panel has reviewed and is otherwise satisfied with the Schedule 8 Part 3 protective provisions. No issues of policy non-compliance arise. The Panel **recommends** them as set out in the applicant's preferred draft DCO.

7.2.109 In relation to ***Schedule 8 Part 4***, whilst there were relevant representations from potential beneficiary bodies, none participated in the examination. No changes were proposed as part of the Consultation Draft DCO or subsequent to it. No submissions were received in respect of or subsequent to the Consultation Draft DCO. The Panel has reviewed and is otherwise satisfied with the Schedule 8 Part 3 protective provisions. No issues of policy non-compliance arise. The Panel **recommends** them as set out in the applicant's preferred draft DCO.

7.2.110 In relation to ***Schedule 8 Part 5***, whilst there was a relevant representation from the Environment Agency, matters at issue were addressed in a Statement of Common Ground [REP-089] and in a specific agreement [REP-090] between the Agency and the applicant. It is clear from those early stage documents that the Environment Agency engaged extensively with the applicants on a wide range of subject matters, including the subject matter of these provisions.

7.2.111 It should be noted that these protective provisions were sought by NE and introduced into the DCO at version 4 by the applicant in response to this change. The provisions address the protection of waterways and enable the Water Framework Directive to be met. The Environment Agency was not an active participant in the examination and did not attend any hearings. It has not provided a positive assent to these provisions in their current form subsequent to the SoCG or

agreement. However, given the function of these provisions and the request made by NE, the Panel does not consider that the deletion of this Part would be in any way appropriate.

7.2.112 In this respect, it should also be noted that the Environment Agency did provide responses to the examination on some matters (albeit not on this one), was consulted on the Panel's Consultation Draft DCO and could have raised any concerns had it wished to do so.

7.2.113 One change to the agreed provisions was proposed by the Panel as part of the Consultation Draft DCO. ***Paragraph 12*** made disputes under these provisions subject to arbitration under article 44, but provided a reserve dispute resolution power jointly to the Secretaries of State for Environment Food and Rural Affairs and Transport. The Panel questioned the relevance of the SoS for Transport to dispute resolution under these provisions as it was not clear that a joint process was required or that it was necessary to protect the Environment Agency's or the undertakers' interests for that SoS to be involved.

7.2.114 The applicant agreed that the SoS for Transport was not relevant and amended the preferred draft DCO to delete that reference.

7.2.115 The Environment Agency did not respond to the Panel's DCO consultation or make any other response on this point, but has been provided with a reasonable opportunity to do so. The Panel recommends that reference to the SoS for Transport in this paragraph should be deleted as per the applicant's preferred draft DCO.

7.2.116 No other submissions have been received. The Panel has reviewed and is otherwise satisfied with the Schedule 8 Part 3 protective provisions. No issues of policy non-compliance arise. The Panel recommends the remaining paragraphs as set out in the applicant's preferred draft DCO.

7.2.117 ***Schedule 8 Part 6*** contains new submissions to protect the Wilton Complex operators (the Wilton Provisions). These were the subject of contention between the applicant and the Wilton parties which was not resolved at the end of the examination. The Panel's reasoning on these provisions issue is fully addressed above under the subject specific heading ***'The Wilton Provisions'***.

Other matters

7.2.118 The Panel has considered whether any matters relating to the DCO are outstanding and need to be secured by way of statutory agreements such as planning obligations. It finds that no such agreements are required or necessary.

7.2.119 The Explanatory Notes to the preferred draft DCO refer to copies of the plans being available for inspection free of charge at the offices of Redcar and Cleveland Borough Council (RCBC) in Redcar. Given the close proximity of the application site on land to this location, the

Panel agrees that it is appropriate. There are no works on land outside the RCBC area and so no other onshore inspection location appears to be necessary.

7.2.120 Finally, the applicant's preferred draft DCO seeks to correct a number of minor and typographical errors and the Panel is content with all of these proposed changes. The Panel therefore recommends that the DCO (and where relevant the Explanatory Notes) should be changed accordingly.

7.3 DCO CONCLUSION

7.3.1 The Panel recommends should consider the DCO as set out in Appendix A to this report. The Appendix A DCO takes account of issues raised in this chapter, is sound and policy compliant.

7.3.2 The recommended DCO takes full account of the applicant's proposed changes to address the outcomes of the Panel's DCO Consultation Draft Process. It also recommends changes to Schedule 8 Part 6 to resolve concerns from the Wilton Parties about protective provisions which had not been the subject of agreement before the end of the examination.

7.3.3 The recommended draft DCO also contains the a number of minor technical changes from the applicant's preferred draft DCO which are not material changes, but which are necessary to ensure the referencing of appropriate plans and documents and to achieve sound legal drafting which the Panel has identified above.

8 FINDINGS AND CONCLUSIONS

8.0 INTRODUCTION

8.0.1 This chapter:

- summarises the Panel's findings and conclusions throughout this report;
- sets out the Panel's conclusions on the case for the proposed development; and
- makes a final recommendation to the SoS.

8.1 THE CASE FOR DEVELOPMENT

8.1.1 The Panel has considered the submitted application documents, all relevant and written representations, statements of common ground and evidence provided in oral submissions during the examination. All of the documents that the Panel has referred to are catalogued in Appendix B below (the examination document library) and are available electronically via the Planning Portal website.

8.1.2 **In Chapters 1 and 2** the Panel identified the application proposal and described it.

8.1.3 In Chapter 1 the examination process is set out. The Panel describes (amongst other matters) the approach taken to consideration of transboundary effects arising from the application and (in Chapter 4) concludes that there are none. The Panel has set out the EIA approach taken by the applicant. The Panel considers that the environmental information submitted by the applicant and EIA process undertaken by it have been adequate. The Panel agrees that the range of potential design and construction options for the proposal provided for within the ES Rochdale envelope was appropriately identified and the proposal was described with sufficient certainty to identify relevant impacts and to support the EIA process. The Panel describes the process used to consider proposed changes to the applicant and its conclusion that these could be examined.

8.1.4 The Panel has considered all relevant legislation and policy applicable to the application, primary sources from which are identified in **Chapter 3** of this report above. More detailed citations in relation to individual identified subject matters are set out in Chapter 4, which records findings and conclusions in relation to the important and relevant considerations arising from the application and from relevant and written representations. The great majority of policy considerations arise from NPS EN-1 and NPS EN-3. The Panel finds no significant issues of non-compliance between the application proposal and these policies.

8.1.5 **The Panel has found in Chapter 4** as follows.

- The application proposal is urgently needed to generate renewable energy and this need is strongly recognised in policy.
- The design approach taken by the application responds positively to policy and represents good design.
- The effects of the application proposal on other projects and proposals and the effects of those other projects and proposals have been identified and mitigated to the extent that mitigation is required and that the approaches taken are policy compliant.
- The effects of the application proposal on biodiversity, ecology and the natural environment have been adequately identified and mitigation has been provided for where necessary and secured in the draft DCO in manners that comply with policy.
- The effects of the application proposal on transportation infrastructure have been adequately identified and mitigation has been provided for in the draft DCO where necessary, in manners that comply with policy. Having regard to the scale and extent of the application proposal, its transportation implications are minor.
- The application does not give rise to any special civil aviation or defence aviation considerations.
- The effects of the application proposal on seascape, townscape and landscape and its visual effects have been adequately identified. Mitigation has been provided for where necessary through the site design process in a manner that complies with policy.
- Offshore, the proposed arrays have a seascape impact, but due to their location far from land, beyond inter-visibility with the shore and in a sea area with few visual receptors, this is minor.
- The onshore cable alignments are proposed to be placed underground, limiting enduring onshore landscape and visual impact to that of the proposed converter stations, well located in an existing industrial area taking advantage of existing visual and acoustic screening.
- The application proposal has been well-sited to minimise effects on the historic environment both at sea and on land. Effects have been adequately identified, provided for in mitigation and the residual effects are minor to immaterial and within the scope provided for in policy.
- The socio-economic effects of the application have been identified to the extent feasible and harms have been mitigated in accordance with policy.
- In the absence of an identified construction and operation port or ports or precisely quantified employment impacts in those ports, the Panel has not placed much weight on these factors. However, that does not indicate against the Panel's overall recommendation
- The acceptability of the economic effects of the application do however rest on the Panel's recommended changes to protective provisions for the Wilton Complex, addressed in relation to compulsory acquisition (in Chapter 6 and the DCO in Chapter 7). These changes are designed to ensure that the construction of cable alignments through the Wilton Complex will not result in

undue adverse economic effects on the existing nationally significant assemblage of petro-chemical industries on that site.

- The construction effects of the application proposal are well managed, although again this conclusion rests on the Panel's recommended changes to protective provisions for the Wilton Complex. These changes are designed to ensure that the construction of cable alignments through the Wilton Complex will not result in undue adverse safety and disruption effects on that site.

8.1.6 In **Chapter 5** the Panel concludes that the HRA process has been properly carried out by the applicant.

- There are no adverse effects on the integrity of a European site (AEoI) due to the application proposal.
- However, having regard to the Dogger Bank SCI, this finding is conditional on the temporary nature of the application proposal.
- It relies on the undertakers' compliance with the detailed offshore design parameters in requirements 3-12, as these ensure that the siting and effects of the offshore installation are all within the Rochdale Envelope and as assessed within the ES.
- It relies on compliance with layout rules in requirement 13 for the same reason.
- It relies on the preparation of a decommissioning scheme as provided for in requirement 15 and the need for this scheme to be developed having regard to the submitted Outline Decommissioning Statement.
- In respect of Forth Islands SPA and Fowlsheugh SPA, the level of impact from the proposed development on these European sites is noted as being "trivial" in respect of both European sites by SNH and hence the development of the application proposal within its Rochdale Envelope is not considered to give rise to AEoI.
- The SoS is recommended to seek further information in respect of aggregate areas 466 and 485 1&2 (essentially to ascertain that no license has been granted of which the Panel is currently unaware)
- Having reached these findings, no further steps in the consideration of effects on European Sites were required to be taken during the examination (such as the consideration of additional mitigation, consideration of alternatives or IROPI).
- There is no reason arising from the consideration of effects on European Sites within the HRA process why the DCO should not be granted as recommended in this report, with the provision of relevant mitigation that is secured by requirements and DML conditions as identified above.

8.1.7 In **Chapter 6** the Panel addresses the compulsory acquisition, temporary possession and related effects of the application and addresses objections to the effects of the application proposal on land.

- The cable routes and converter station sites have generally been selected to minimise the adverse effects of the development and of compulsory acquisition and related provisions.
- The public benefit of the application proposal generally outweighs the harm done to private interests due to compulsory acquisition and related provisions.
- The cable alignments crossing foreshore and agricultural land will cause disruption. However the effects of this are compensable and can be addressed in due course through the acquisition and compensation process.
- However, within the secure perimeter of the Wilton Complex, the Panel has found that it is necessary to moderate the application of compulsory acquisition and related powers to secure the safe and economic operation of existing nationally significant petro-chemical industry facilities. Scope for the periodic maintenance and upgrading of this industry, which also gives rise to major engineering and construction projects that are not NSIPs must be retained and a means found of balancing conflicts in project delivery requirements and timescales.
- For these reasons, the Panel has recommended a mechanism whereby owner / operator consent is required before the powers in compulsory acquisition and related provisions are put into effect within the Wilton Land. The Panel has recommended that this limitation is subject to a special and time limited expert dispute resolution process, on the basis of which the balance between the need to protect the national interest in the operation and development of the Wilton Complex and the need to progress the application proposal in the national interest is properly served. Owner / operator consent may not be unreasonably withheld. Withheld consent and delayed consideration of a consent request are both grounds for referral to an independent and expert dispute resolution within a 60 day timescale. In this way, the Panel considers that the national interest in the deliverability and timeliness of the application proposal are secured.
- There is an appropriate means of securing funding for acquisition and compensation costs.

8.1.8 At sea, the Crown Estate has indicated that it is content with the provisions of the DCO and no other issues arise.

8.1.9 In **Chapter 7** the Panel reviews the DCO. The approach taken to the examination of the DCO, providing for an initial review of the structure of the DCO and a later review of specific issues of detail arising from it, together with consultation on a Panel commentary, led iteratively to changes proposed by the applicant and the consensual resolution of most concerns. The Panel proposes changes to address the following issues.

- To resolve concerns raised by the MMO in respect of the operation of the DMLs in the order, providing for the use of

named disposal areas, for the management of dropped objects and for marine archaeology.

- To ensure that protective provisions for Wilton Owners and operators are changed to give effect to the balance to be struck between the undertaker's ability to give effect to compulsory acquisition and related powers and the Wilton owners and operators ability to subject such powers to an independent expert dispute resolution process, should the undertakers' proposals lead to adverse effects.

8.1.10 The Panel has had regard to the tests for consideration set out in PA2008 s104 (see Chapter 3) and reports that a decision to grant the DCO as recommended would be in accordance with relevant policy from NPS EN-1 and EN-3. There was one Local Impact Report from Redcar and Cleveland Borough Council to which the SoS should have regard and which supports the application proposal, highlighting its potential to give rise to significant local in additional to national benefits.

8.1.11 Other matters, including the matters that the Panel considers to be important and relevant are identified in this report and none indicate against the grant of the DCO as recommended.

8.2 RECOMMENDATION

8.2.1 The Panel has examined the application within the context set by NPS EN-1, NPS EN-3 and NPS EN-5. The Panel finds that the application is in accordance with all three policies.

8.2.2 The Panel considers that it is possible to decide the application in accordance with NPS policy and in accordance with PA2008 s104 (3). However, the Panel has observed in Chapters 4, 6 and 7 above and that further to PA2008 s104 (7), maintenance of the petrochemical and related production at the Wilton Complex is an important and relevant consideration, but that the passage of cable alignments through the Wilton Complex without appropriate protective provisions for the Wilton owners and operators could harm the continuation of production to the extent that the adverse impact of the proposed development would outweigh its benefits. The Panel considers that protective provisions for the owners and operators of the Wilton Land and the Wilton Complex in the form set out in Appendix A enable production at Wilton to be continued and ensure that PA2008 s104 (7) does not apply there.

8.2.3 For all of the above reasons and in the light of the Panel's findings and conclusions on important and relevant matters set out in the report, the Panel recommends that the SoS should grant the DCO with changes as set out in Appendix A to this report.

8.2.4 The recommended changes are necessary in the Panel's view to ensure that the correct balance is struck between the national need for the application proposal to be delivered and the need to ensure that

delivery does not unduly affect the national interest in the ongoing safe and economically beneficial operation of existing petrochemical industries in the Wilton Complex.

8.2.5 The recommended changes are also necessary to address concerns expressed by the MMO about the draft DCO.

APPENDICES

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APPENDIX A: RECOMMENDED DEVELOPMENT CONSENT ORDER

S T A T U T O R Y I N S T R U M E N T S

201X No.

INFRASTRUCTURE PLANNING

The Dogger Bank Teesside A and B Offshore Wind Farm Order 201X

Made - - - - *[***] 201X*

Coming into force - - *[***] 201X*

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 made under sections 37, 42, 48, 51, 56, 58, 59 and 232 of the Planning Act 2008 ("the 2008 Act")(**a**) for an Order under sections 37, 55, 115, 120, 121, 122, 140 and 149A of the 2008 Act;

The application was examined by an Examining authority appointed by the Secretary of State pursuant to Chapter 4 of the 2008 Act;

The Examining authority, having considered the national policy statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the 2008 Act;

The Examining authority, having considered the objections made and not withdrawn, and the application with the documents that accompanied the application, has recommended the Secretary of State to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change in the proposals;

The notice of the Secretary of State's determination was published;

As the Secretary of State in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 149A of the 2008 Act the Secretary of State makes the following Order.

(**a**) 2008 c.29

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Dogger Bank Teesside A and B Offshore Wind Farm Order and comes into force on 201X.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1990 Act" means the Town and Country Planning Act 1990(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2004 Act" means the Energy Act 2004(**f**);

"the 2008 Act" means the Planning Act 2008(**g**);

"the 2009 Act" means the Marine and Coastal Access Act 2009(**h**);

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

(**a**) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(**b**) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(**c**) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and1 (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**d**) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(**e**) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(**f**) 2004 c.20

(**g**) 2008 c.29.

(**h**) 2009 c.23.

"array area" means the area within which Work Nos. 1A(a) to (e) and 1B(a) to (e) may be constructed which are the areas enclosed within a straight line drawn between points whose coordinates are set out in the respective tables in Part 1 of Schedule 1 to this Order and which are shown on the Offshore Order Limits and Grid Co-ordinates Plan;

"Array Location and Layout Plan" means the plan which details the specification and layout of all wind turbine generators, HVAC cables, substations, platforms and meteorological masts;

"authorised development" means the development and associated development described in Part 1 of Schedule 1 (authorised project) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

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

"Bizco 2" means Doggerbank Project 2 Bizco Limited (Company number 07791977) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

"Bizco 3" means Doggerbank Project 3 Bizco Limited (Company number 07791964) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"cable" includes, in respect of any onshore cable, direct lay cables and/or cables laid in cable ducts; and in respect of any cable whether onshore or offshore may include fibre optic cables;

"cable crossings" means the crossing of existing sub-sea cables and pipelines by the inter-array, inter platform and/or export cables authorised by this Order together with physical protection measures including cable protection;

"cable protection" means the measures to protect cables from physical damage and exposure due to loss of seabed sediment. The range of remedial cable protection parameters and technology options, to the extent assessed in the Environmental Statement, including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

"carriageway" has the same meaning as in the 1980 Act;

"combined platform" means a single offshore platform constructed in an array area comprising two or more of any of the following—

(a) an offshore collector platform;

(b) an offshore converter platform;

(c) an offshore accommodation or helicopter platform;

"commence" means either—

(a) in relation to the licensed marine activities seaward of MHWS referred to in the deemed marine licences in Schedule 7 to this Order (deemed marine licence under the Marine and Coastal Access Act 2009) the first carrying out of any licensed marine activities authorised by the deemed marine licences except for the pre-construction surveys and monitoring; or

(b) in relation to the activities landward of MLWS and beginning to carry out any material operation (as defined in section 155 of the 2008 Act) in respect of the authorised development, forming part of the authorised development other than operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "commencement" is to be construed accordingly;

"commercial operation" means—

(a) in relation to the Project A Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works; and

(b) in relation to the Project B Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"construction compound" means a secure temporary construction area associated within the onshore works, including temporary fencing, lighting and ground preparation, to be used for the location of site offices; general storage; storage of plant, cable drums, ducting and other construction materials; welfare facilities; car parking; waste management; lay-down areas; bunded generators and fuel storage or any other means of enclosure of areas required for construction purposes;

"Dogger Bank Zone" means the Dogger Bank Offshore Wind Farm Zone located in the North Sea between 125 kilometres and 290 kilometres off the UK coast and extending over an area of approximately 8,660 km^2;

"draft fisheries liaison plan" means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

"electrical converter substation and compound" means an electrical converter(s) housed within one or more converter halls and a compound containing electrical equipment including power transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection systems including masts, control buildings, communications masts, back-up generators, access, fencing and other associated equipment, structures or buildings;

"Examining authority" means the Examining authority appointed under the 2008 Act to examine the application to this Order;

"the Environmental Statement" means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

"gravity base foundation" means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"horizontal directional drilling" is a steerable trenchless method of installing underground pipes, ducts and cables in a shallow arc along a prescribed underground bore path by using a surface launched drill;

"HVAC" means high voltage alternating current;

"In Principle Monitoring Plan" means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

"the land plan" means the Land Plan Offshore and Onshore Land Plan as certified as the land plan by the Secretary of State for the purposes of this Order;

"maintain" includes upkeep, inspect, repair, adjust, alter, relay and remove, to the extent assessed in the Environmental Statement and any derivative of maintain is to be construed accordingly;

"MCA" means the Maritime and Coastguard Agency or any successor to its function;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"mean low water springs" or "MLWS" means the average of the low water heights occurring at the time of spring tides which is also the outermost extent of the relevant planning authority jurisdiction;

“meteorological mast” or “meteorological station” means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of each deemed licence under the 2009 Act or any successor to its function;

“monopole foundation” means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers and abrupt steps. Sub types for wind turbine generators and meteorological stations include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“National Grid substation” means the existing National Grid Electricity Transmission UK Substation located at Lackenby;

“offshore accommodation or helicopter platform” means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, small and large scale electrical power systems, J-tubes, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable High Voltage Direct Current transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore platform” means any of the following—

(a) an offshore accommodation or helicopter platform;

(b) an offshore collector platform;

(c) an offshore converter platform; or

(d) a combined platform

"the Offshore Order Limits Plan and Grid Co-ordinates Plan" means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

"offshore works" means the Project A Offshore works and the Project B Offshore works, the relevant shared works and any other authorised development associated with those works;

"offshore works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

"the Onshore Order Limits Plan and Grid Co-ordinates Plan" means the plans certified as the onshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

"onshore works" means the Project A Onshore works, the Project B Onshore works, the shared works and any other authorised development associated with those works;

"onshore works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

"Order land" means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

"the Order limits" means—

(a) the limits shown on the Offshore Order Limits and Grid Coordinates Plan within which the offshore works may be constructed as part of the authorised project; and

(b) the limits shown on the Onshore Order Limits and Grid Coordinates Plan within which the onshore works may be constructed as part of the authorised project;

"outline Code of Construction Practice" means the document certified as the outline Code of Construction Practice by the Secretary of State for the purposes of this Order;

"outline post construction maintenance plan" means the document certified as the outline post construction maintenance plan by the Secretary of State for the purposes of this Order;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**a**);

"Project A" means the Project A Offshore works and the Project A Onshore works;

"Project A Offshore works" means Work Nos. 1A, 2A and 3A and any other authorised development associated with those works;

"Project A Onshore works" means Work Nos. 4A, 5A, 6A and 8A and any other authorised development associated with those works;

"Project B" means the Project B Offshore works and the Project B Onshore works;

"Project B Offshore works" means Work Nos. 1B, 2B and 3B and any other authorised development associated with those works;

"Project B Onshore works" means Work Nos. 4B, 5B, 6B and 8B and any other authorised development associated with those works;

"relevant planning authority" means Redcar and Cleveland Borough Council;

"relevant planning authority for the port" means Redcar and Cleveland Borough Council as the local planning authority responsible for the port used to service construction of offshore works and the local planning authority or authorities responsible for any port or ports outside the Redcar and Cleveland Borough which will be used to service construction of offshore works;

"restricted work area" means restricted work area shown on offshore works plans;

(**a**) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

"requirements" means those matters set out in Part 3 Schedule 1 (requirements) to this Order;

"scheduled works" means the numbered works specified in Schedule 1 to this Order, or any part of them;

"scour protection" means measures to prevent loss of seabed sediment around foundation bases by use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

"the shared works" means Work Nos. 2T, 7, 7L, 8S, 9 and 10A to 10K;

"statutory undertaker" means any person falling within section 127(8) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"streets and public rights of way plans" means the plans certified by the streets and public rights of way plans by the Secretary of State for the purposes of this Order;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"tribunal" means the Lands Chamber of the Upper Tribunal;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"undertaker" means —

(a) in relation to the Project A Offshore works and the Project A Onshore works, Bizco 2;

(b) in relation to the Project B Offshore works and the Project B Onshore works, Bizco 3; and

(c) in relation to the shared works, Bizco 2 or Bizco 3.

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"wind turbine generator" means a structure comprising a tower, rotor with 3 blades, nacelle and ancillary electrical and other equipment which may include: J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter transfer facilities and other associated equipment, fixed to a foundation; and

"works plans" means the plans certified as the onshore works plans and offshore works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project are to be taken to be measured along that work, except in respect of the parameters referred to in Part 2 requirements 3 to 12 and 18; and in Schedule 7 deemed marine licences Part 1B Conditions 3 to 11 and Part 2B Conditions 3 to 11; and Part 3B Conditions 3 to 8 and Part 4B Conditions 3 to 8.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) References in this Order to points identified by letters are to be construed as references to the points so lettered on the onshore works plans.

(6) A reference in this Order to a co-ordinate is a reference to World Geodetic System 1984 datum (WGS84).

(7) The expression "includes" is to be construed without limitation.

PART 2

Principal Powers

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and the requirements the undertaker is granted—

(a) development consent for the authorised development; and

(b) consent for the ancillary works,

to be carried out within the Order limits.

(2) The development forming Project A for which development consent is granted under paragraph (1) must be begun within seven years of the date of coming into force of this Order.

(3) The development forming Project B for which development consent is granted under paragraph (1) must be begun within seven years of the date of coming into force of this Order.

(4) The development forming the shared works for which development consent is granted under paragraph (1) must be begun within seven years of the date of the coming into force of this Order.

Maintenance of authorised project

4.—(1) The undertaker may at any time maintain, and maintain from time to time, the authorised project except to the extent that this Order and any agreement made under this Order provide otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under part 4 of the 2009 Act.

Operation of generating station

5.—(1) The undertaker is hereby authorised to operate and use the authorised development for generating and transmitting electricity.

(2) This article does not relieve the undertaker of any requirements to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Procedure in relation to approvals etc under requirements

6.—(1) Where an application is made to the relevant planning authority or to the relevant planning authority for the port for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a relevant planning authority or a relevant planning authority for the port required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a relevant planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a relevant planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of "statutory undertaker") to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989(**a**).

(4) Nothing in the application of article 6(1)(b) to a requirement shall remove the application of the provisions of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**b**).

Benefit of the Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order are to have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

8.—(1) The undertaker may, subject to the provisions of this article, with the consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights as may be so agreed,

except where paragraph (5) applies in which case no such consent is required.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), are to include references to the transferee or the lessee.

(3) The undertaker may with the consent of the Secretary of State—

(a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole or part of Marine Licence 1 and/or the whole or part of Marine Licence 2 and/or the whole or part of Marine Licence 3 and/or the whole or part of Marine Licence 4 and such related statutory rights as may be agreed between the undertaken and the transferee; or

(b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole or part of Marine Licence 1 and/or the whole or part of Marine Licence 2 and/or the whole or part of Marine Licence 3 and/or the whole or part of Marine Licence 4 and such related statutory rights as may be so agreed.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is to be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(5) This paragraph applies to any part of the onshore or offshore works other than works comprised within Marine Licence 3 and Marine Licence 4 where—

(a) the transferee or lessee is a person who holds a licence under the Electricity Act 1989; or

(b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(**a**) 1989 c. 29.
(**b**) 2009 c.2263.

(iii) compensation has been paid in final settlement of any such claim;

(iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(6) The provisions of article 14 (street works), 15(temporary stopping up of streets), 22 (compulsory acquisition of land), 25 (compulsory acquisition of rights), 29(temporary use of land for carrying out the authorised project) and 30 (temporary use of land for maintaining authorised project) have effect only for the benefit of a transferee or lessee who is also—

(a) in respect of Work Nos. 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7, 7L, 8A, 8B, 8S, 9, a person who holds a licence under the Electricity Act 1989; or

(b) in respect of functions under article 13 (street works) relating to a street, a street authority.

(7) Notwithstanding anything contained in Part IV of the 2009 Act, but subject to paragraph (3), the undertaker may pursuant to an agreement under paragraph (1) transfer to another person relevant provisions.

(8) The undertaker must consult the MMO prior to a request to the Secretary of State to transfer to the transfer to another person relevant provisions pursuant to an agreement under paragraph (1).

(9) The Secretary of State must consult the MMO prior to giving consent to the undertaker to transfer to another person relevant provisions pursuant to an agreement under paragraph (1).

(10) As soon as is reasonably practicable but in any event no later than seven days after any agreement under paragraph (1) comes into effect which transfers to the transferee relevant provisions, the transferor must give written notice to the MMO of—

(a) the name and contact details of the person to whom the benefit of the powers have been transferred or granted;

(b) subject to paragraph (10),the date on which the transfer took effect;

(c) the powers transferred or granted;

(d) pursuant to paragraph (4), the restrictions, liabilities and obligations that apply to the person exercising the powers transferred or granted;

(e) where relevant, a plan showing the works or areas to which the transfer or grant related; and

(f) a copy of the consent effecting the transfer or grant from the Secretary of State.

(11) Prior to seeking the consent of the Secretary of State under paragraph (1) the undertaker must provide to the MMO details of the relevant works proposed to be transferred under an agreement made under paragraph (1) including the information that the undertaker would propose to provide to the MMO pursuant to paragraph (10) above, following entry into that agreement pursuant to paragraph (1) above.

(12) Sections 72(7) and (8) of the 2009 Act do not apply to a transfer of relevant provisions by the undertaker to another person pursuant to an agreement under paragraph (1).

(13) In this article “relevant provisions” means any of the provisions of the marine licences specified in either Parts 1A, 2A, 3A and 4A of Schedule 7 to this Order together with the corresponding Conditions set out in Parts 1B, 2B, 3B and 4B of Schedule 7 to this Order.

Guarantees in respect of payment

9.—(1) Bizco 2 is not to begin to exercise the powers conferred by Part 5 (powers of acquisition) unless either guarantees or alternative forms of security for that purpose in respect of the liabilities of the undertaker to pay compensation under Part 5 of this Order are in place.

(2) Bizco 3 is not to begin to exercise the powers conferred by Part 5 (powers of acquisition) unless either guarantees or alternative forms of security for that purpose in respect of the liabilities of the undertaker to pay compensation under Part 5 of this Order are in place.

(3) The form of guarantee or security referred to in paragraph (1) and (2) above and the amount of the guarantee or security must be approved by the relevant planning authority but must not be unreasonably withheld.

(4) The undertaker shall provide the relevant planning authority with such sufficient information as may reasonably be required relating to the interests in the land affected by the exercise of the powers conferred by Part 5 of this Order for the relevant planning authority to be able to determine the adequacy of the proposed guarantee or security including—

(a) the interests affected; and

(b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(5) A guarantee or other security given under this article in respect to compensation of any liability of the undertaker to pay compensation under Part 5 of this Order is to be treated as enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

Power to make agreements

10.—(1) Subject to paragraph (4), Bizco 2 and Bizco 3 may enter into and carry into effect agreements with respect to the exercise of any powers conferred by this Order to acquire land or rights over land and the construction, maintenance, use and operation of the offshore works and the onshore works or any part or parts thereof and as to any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of or the making of contributions towards the cost of the matters referred to in this paragraph 10(1) above by Bizco 2 or by Bizco 3 or by Bizco 2 and Bizco 3 jointly.

(2) Subject to paragraph (4), any such agreement may provide (inter alia) for the exercise by Bizco 2 or Bizco 3, or Bizco 2 and Bizco 3 jointly, of all or any of the powers of Bizco 2 or Bizco 3 conferred under this Order, in respect of the lands and works referred to in subsection (1) above or any part or parts thereof and for the transfer to and vesting in Bizco 2 or Bizco 3 or Bizco 2 and Bizco 3 jointly, of those lands and works or any part or parts thereof together with the rights and obligations of Bizco 2 or Bizco 3 in relation thereto.

(3) The exercise by Bizco 2 or Bizco 3 or by Bizco 2 and Bizco 3 jointly, of any of the powers of this Order shall be subject to the like provisions in relation thereto as would apply if those powers were exercised by Bizco 2 and Bizco 3 alone, and accordingly those provisions with any necessary modifications shall apply to the exercise of such powers by Bizco 2 or Bizco 3, or by Bizco 2 and Bizco 3 jointly.

(4) In constructing—

(a) Work Nos. 2A, 3A, 4A, 5A, 6A and 8A, Bizco 2 may enter onto the relevant land for the purpose of constructing those works;

(b) Work Nos. 2B, 3B, 4B, 5B, 6B and 8B Bizco 3 may enter onto the relevant land for the purpose of constructing those works;

(c) Work Nos. 2T, 7, 7L, 8S, 9, 10A, 10B, 10C, 10D, 10E 10F, 10G, 10H, 10I, 10J and 10K Bizco 2 may in common with Bizco 3, enter onto the land required for those works to construct those works; and

(d) Work Nos. 2T, 7, 7L, 8S, 9, 10A, 10B, 10C, 10D, 10E 10F, 10G, 10H, 10I, 10J and 10K Bizco 3 may in common with Bizco 2, enter onto the land required for those works to construct those works.

(5) In paragraph 4(a) "relevant land" means the land shown on the works plans within the Order limits for Work Nos. 2B, 3B, 4B, 5B, 6B and 8B which has been acquired for the purpose of the Project B Onshore works and the Project B Offshore works.

(6) In paragraph 4(b) "relevant land" means the land shown on the works plans within the Order limits for Work Nos. 2A, 3A, 4A, 5A, 6A and 8A which has been acquired for the purpose of the Project A Onshore works and the Project A Offshore works.

(7) Bizco 2 and Bizco 3 may enter into, and carry into effect, agreements for the transfer to and vesting in Bizco 2 or Bizco 3, or Bizco 2 or Bizco 3 jointly of —

(a) any of the works authorised by the Order or any part of any of those works; or

(b) any works, lands or other property required for the purposes of those works;

together with any rights and obligations (whether or not statutory) of Bizco 2 or Bizco 3 relating thereto.

Disapplication and modification of legislative provisions

11.—(1) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

(a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991(**a**), which require consent or approval for the carrying out of the works; and

(b) the provisions of any byelaws made under, or having effect as if made under, paragraph 66 to the Land Drainage Act 1991(**b**),which require consent or approval for the carrying out of the works; and

(c) the provisions of the Hedgerows Regulations 1997(**c**) are deemed to be amended by the insertion at the end of paragraph 6(1)(e) of "(ee) For carrying out development for which development consent is conferred under an Order pursuant to section 114 of the Planning Act 2008".

(2) Section 6 of the Party Wall etc. Act 1996(**d**) (underpinning of adjoining buildings) does not apply in relation to a proposal to excavate, or excavate for and erect anything, in exercise of the powers conferred by this Order.

Abatement of works abandoned or decayed

12.—(1) Where the offshore works or any part of them are abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove the offshore works or any relevant part of it, without prejudice to any notice served under section 105(2) of the 2004 Act.

(2) The notice may also require the restoration of the site of the relevant part(s) of the offshore works to a safe and proper condition within an area and to such an extent as may be specified in the notice.

Defence to proceedings in respect of statutory nuisance

13.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**e**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(**a**) 1991 c. 57.
(**b**) 1991 c. 59.
(**c**) 1997 No.1160.
(**d**) 1996 c.40.
(**e**) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**a**); or

(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 29; or

(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

(3) The provisions of this article do not affect the application to the authorised development of section 158 of the 2008 Act (nuisance: statutory authority) or any rule of common law having similar effect.

PART 3

Streets

Street works

14.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and shown on the streets and public rights of way plans and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street;

(c) place apparatus under the street;

(d) maintain apparatus under the street or change its position; and

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

(**a**) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

Temporary stopping up of streets

15.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the streets and public rights of way plan, in column (1) of that Schedule.

(4) The undertaker must not temporarily stop up, alter or divert—

(a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and

(b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article may be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

16. The undertaker may, for the purposes of the authorised project—

(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 4 (access to works);

(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

17.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) the construction of any new street (including any structure carrying the street over or under the authorised development) under the powers conferred by this Order;

(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under the authorised development;

(c) any stopping up, alternation or diversion of a street under the powers conferred by this Order; or

(d) the execution in any street specified in article 14 (street works) of any of the works referred to in article 14.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and

(c) contains such terms as to payment and otherwise as the parties consider appropriate.

PART 4

Supplemental Powers

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**a**)(right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(**b**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(9) This article does not relieve the undertaker of any obligation to obtain from the Environment Agency any permit or licence or any other obligation under any other legislation that may be required to authorise the making of a connection to, or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (2).

Protective work to buildings

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Onshore Order Limits Plan and Grid Co-ordinates Plan as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(**a**) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(**b**) S.I. 2010/675.

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or

(b) after the completion of that stage of the authorised project in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that stage of the authorised project is brought into commercial operation.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6)—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage.;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 44 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of five years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is brought into commercial operation it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that stage of the authorised project,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article is to relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.

Authority to survey and investigate the land

20.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Onshore Order Limits Plan and Grid Co-ordinates Plan or which may be affected by the authorised project and —

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) After completion of the activities being undertaken pursuant to this article any apparatus should be removed as soon as practicable and the land should be restored to its original condition.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) This article is to apply only to the onshore works.

Removal of human remains

21.—(1) In this article "the specified land" means the land within the limits shown on the Onshore Order Limits Plan and Grid Co-ordinates Plan.

(2) Before the undertaker carries out any development or works which disturb or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within fifty six days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person must cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

(a) within the period of fifty six days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) within fifty six days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of fifty six days; or

(c) within fifty six days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person makes in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation must be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to Redcar and Cleveland Borough Council mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(**a**) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

PART 5

Powers of Acquisition

Compulsory acquisition of land

22.—(1) Bizco 2 may acquire compulsorily so much of the Order land as is required for the Project A Onshore works, the Project A Offshore works, the shared works or to facilitate, or is incidental, to the construction and maintenance of those works.

(2) Bizco 3 may acquire compulsorily so much of the Order land as is required for Project B Onshore works, the Project B Offshore works and the shared works or to facilitate, or is incidental, to the construction and maintenance of those works.

(3) As from the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is to be discharged from all rights, trusts and incidents to which it was previously subject.

(4) As from the date on which notice is given by the undertaker in relation to the commencement of works on the Order land that requires their discharge the land so affected is to be discharged from all rights, trusts and incidents to which it was previously subject.

(5) The undertaker shall give notice to any owner of the commencement of works under the Order on land that requires the discharge of rights, trusts and incidents to which that land is subject.

(6) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to article 25 (compulsory acquisition of rights), article 29 (temporary use of land for carrying out the authorised project) and article 10 (Power to make agreements).

Compulsory acquisition of land – incorporation of the mineral code

23. Part 2 of Schedule 2 to the Acquisition of Land Act 1981(**b**) (minerals) is incorporated in this Order subject to the modifications that for "the acquiring authority" substitute "the undertaker".

Time limit for exercise of authority to acquire land compulsorily

24.—(1) After the end of the period of seven years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 27 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(**c**).

(**a**) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

(**b**) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

(**c**) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981Act which are not relevant to this Order.

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised project) must cease at the end of the period referred to in paragraph (1), but nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

25.—(1) Subject to paragraphs (2), (3) and (4) the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Part 1 of Schedule 5 (land in which only new rights etc, may be acquired) the powers of compulsory acquisition conferred under this Order are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) In the case of the Order land specified in column (1) of Part 2 of Schedule 5 (land in which only new rights etc, may be acquired) Bizco 2 may exercise a power to acquire rights conferred by paragraph (1) over that land.

(4) In the case of the Order land specified in column (1) of Part 3 of Schedule 5 (land in which only new rights etc, may be acquired) Bizco 3 may exercise a power to acquire rights conferred by paragraph (1) over that land.

(5) Subject to section 8 of the 1965 Act where the undertaker acquires a right over the Order land under this article the undertaker is not to be required to acquire a greater interest in that land.

(6) After completion of any activities pursuant to the exercise of the rights pursuant to this article the land is to be restored, so far as practicable, to its original condition.

Private rights of way

26.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are to be extinguished—

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order are to be extinguished on the appropriation of the land by the undertaker for any of those purposes

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order are to be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) are to have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land,

(ii) the undertaker's appropriation of it,

(iii) the undertaker's entry onto it, or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs are not to apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right of way is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

is to be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

27.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**a**) is to apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, is to have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is to be substituted—

"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority is to include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated" .

(4) In that section, in subsection (2), for "(1)(b)" there is to be substituted "(1)" and after "given" there is to be inserted "and published".

(5) In that section, for subsections (5) and (6) there is to be substituted—

"(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.".

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after "publication" there is to be inserted "in a local newspaper circulating in the area in which the land is situated"; and

(b) subsection (2) is to be omitted.

(**a**) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words "(as modified by section 4 of the Acquisition of Land Act 1981)" are to be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Rights under or over streets

28.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not to be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised project

29.—(1) The undertaker may, in connection with the carrying out of the authorised project enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule exercising the rights identified in Class 9 in the book of reference.

(2) Not less than fourteen days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 6.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other

enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) is not to apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

30.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

(a) enter on and take temporary possession of any land within the Onshore Order Limits Plan and Grid Co-ordinates Plan if such possession is reasonably required for the purpose of maintaining the authorised project; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) must not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised project, means the period of five years beginning with the date on which that stage of the authorised project is brought into commercial operation.

Statutory undertakers

31.—(1) Subject to the provision of Parts 1 to 4 of Schedule 8 to the Order the undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the Order limits;

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers within the Order limits; and

(c) acquire compulsorily the new rights over land belonging to statutory undertakers within the Order limits.

(2) In this article a reference to a statutory undertaker includes a reference to a public communications provider. A "public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003.

Recovery of costs of new connections

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31 (statutory undertakers), any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus or Part 3 of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003; and

"public utility undertaker" has the same meaning as in the 1980 Act.

Application of landlord and tenant law

33.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants is to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Special category land

34.—(1) Upon entry by the undertaker on to the special category land pursuant to article 25 (compulsory acquisition of rights), so much of the special category land required for the purposes of the exercising by the undertaker of the order rights is discharged from all rights, trusts and incidents to which it was previously subject.

(2) In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied that the special category land when burdened with the order rights is to be no less advantageous to affected persons than it was before the imposition of the order rights on the special category land.

(3) In this article—

"affected persons" means—

(a) the persons in whom the special category land was previously vested;

(b) other persons, if any, entitled to rights in common or other rights; and

(c) the public;

"order rights" means rights exercisable over the special category land by the undertaker under article 25 (compulsory acquisition of rights);

"the special category land" means the land identified as forming open space and numbered 1, 2A and 2B in the book of reference and on the plan entitled "Onshore Special Category Land Plan".

PART 6

Miscellaneous and General

Railway and navigation undertakings

35.—(1) Subject to the following provisions of this article, the undertaker must not under article 14 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

(a) is under the control or management of, or is maintainable by, railway undertakers or a navigation authority; or

(b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as specified by the person giving it but must not be unreasonably withheld.

(4) In this paragraph "navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Trees subject to tree preservation orders

36.—(1) The undertaker may fell or lop any tree within the Order limits, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker shall do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) must not apply.

(3) The authority given by paragraph (1) must constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part I of the 1961 Act.

Operational land for purposes of the 1990 Act

37. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees

38.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) The undertaker may remove any hedgerows within the Order limits that may be required to be removed for the purposes of carrying out the authorised development.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Deemed licences under the Marine and Coastal Access Act 2009

39. The undertaker is granted deemed licences under Part 4 Chapter 1 of the 2009 Act—

(a) to carry out the Project A Offshore works and make the deposits specified in Parts 1A and 2A of Schedule 7 subject to the Conditions set out in Parts 1B and 2B of that Schedule; and

(b) to carry out the Project B Offshore works and make the deposits specified in Parts 3A and 4A of Schedule 7, subject to the Conditions set out in Parts 3B and 4B of that Schedule.

Saving for Trinity House

40. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown Rights

41.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

(a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land;

(iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Certification of plans and documents etc

42.—(1) The undertaker must, as soon as practicable after the making of this Order, must submit to the Secretary of State copies of—

(a) the Offshore Order Limits and Grid Co-ordinates Plan and Onshore Order Limits and Grid Co-ordinates Plan;

(b) the book of reference;

(c) the land plan offshore and onshore land plans;

(d) the offshore works plans and onshore works plans;

(e) the Environmental Statement;

(f) the Hierarchy of offshore and onshore management plans;

(g) the outline Code of Construction Practice;

(h) the draft fisheries liaison plan;

(i) the In Principle Monitoring Plan;

(j) the disposal scenario statement;

(k) the outline offshore archaeological written scheme of investigation;

(l) the onshore draft site waste management plan;

(m) the outline post construction maintenance plan; and

(n) the outline decommissioning statement.

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified may be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Protective provisions

43. Schedule 8 to this Order has effect.

Arbitration

44. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signatory text

Name
Address Head of Unit
Date Department of Energy and Climate Change

SCHEDULES

SCHEDULE 1

Article 3

Authorised Project

PART 1

Authorised Development

1. A nationally significant infrastructure Project as defined in sections 14 and 15 of the 2008 Act located in the Dogger Bank Zone comprising—

Project A Offshore Works

Work No. 1A—

(a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundation situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (e) below;

Coordinates for the array area

Point	*Latitude (Decimal Degrees)*	*Longitude (Decimal Degrees)*
31	55.11790	2.57524
32	55.11860	3.09890
33	55.10690	3.09409
34	55.09071	3.08744
35	55.07452	3.08080
36	55.05832	3.07416
37	55.04213	3.06752
38	55.02594	3.06090
39	55.00974	3.05427
40	54.99487	3.04820
41	54.97803	3.04132
42	54.97735	3.04104
43	54.96115	3.03444
44	54.95485	3.03187
45	54.95510	3.01393
46	54.95556	2.97851
47	54.95562	2.97450
50	54.96011	2.57690

(b) a maximum of seven offshore platforms comprising the following:

(i) up to four offshore collector platform(s) situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(ii) an offshore converter platform situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iv) or any of the platforms comprised in Work No. 1A(b)(i) to Work No. 1A(b)(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;

(c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1A(a) either fixed to the seabed by monopole, multileg or gravity base type foundations or utilising a floating support structure anchored to the seabed;

(d) A network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—

(i) any of the wind turbine generators comprising Work No. 1A(a);

(ii) any of the wind turbine generators comprising Work No. 1A(a) and Work No. 1A(c);

(iii) any of the works comprising Work No. 1A(b) and Work No. 1A(c); and

(iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

(e) up to ten vessel mooring(s) situated within the array area specified in the table Work No. 1A(a) consisting of a single floating buoy secured by chain and anchor anchored to the seabed.

2. Associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid on or beneath the seabed between Work No. 1A(b)(ii) or Work No. 1A(b)(iv) and Work No. 3A including cable crossings and situated within the co-ordinates of the export cable corridor area specified in the Offshore Order Limits Plan and Grid Co-ordinates Plan.

Project A Onshore Works

Redcar and Cleveland Borough Council—

Work No. 3A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications between mean low water springs and mean high water springs and connecting Work No. 2A with Work No 4A;

Work No. 4A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground between Work No. 3A at mean high water springs and Work No. 5A including the construction of a haul road and construction access;

Work No. 5A –landfall transition joint bays and trenchless installation drill launch pits together with associated landfill works, construction compound and up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electric communications laid underground in ducts if necessary, connecting Work No. 4A with Work No. 6A including the construction of a haul road and construction access;

Work No 6A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid

underground, in ducts if necessary, from Work No. 5A and running in a generally westerly direction for a distance of 7 kilometres to Work No. 7. Work No. 6A includes the construction of a haul road and construction access;

Work No 8A – up to three export cables for the transmission of high voltage alternating current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary from one of the electrical converter substation comprised in Work No. 7 and running in a westerly direction for a distance of 2 kilometres to the connection bay within the National Grid substation connection works comprising Work No. 9 and including the construction of a haul road and construction access;

Project B Offshore Works

Work No. 1B—

(a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundation, situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (e) below;

Coordinates for the array area

Point	*Latitude (Decimal Degrees)*	*Longitude (Decimal Degrees)*
25	55.12443	2.14572
26	55.13002	2.21780
51	54.97070	2.50189
52	54.96096	2.48529
56	54.83864	2.27783
57	54.83862	2.26336
24	55.01111	1.95454

(b) a maximum of seven offshore platforms comprising the following:

(i) up to four offshore collector platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundation;

(ii) an offshore converter platform situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;

(iv) or any of the platforms comprised in Work No. 1B(b)(i) to Work No. 1B(b)(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundation;

(c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1B(a) either fixed to the seabed by monopole, multileg or gravity base type foundations or utilising a floating support structure anchored to the seabed;

(d) a network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—

(i) any of the wind turbine generators comprising Work No. 1B(a);

(ii) any of the wind turbine generators comprising Work No. 1B(a) and Work No. 1B(c);

(iii) any of the works comprising Work Nos. 1B(b) and Work No. 1B(c);

(iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

(e) up to ten vessel mooring(s) situated within the array area specified in the table Work No. 1B(a) consisting of a single floating buoy secured by chain and anchor anchored to the seabed.

3. Associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid on or beneath the seabed between Work No. 1A(b)(ii) or Work No. 1B(iv) and Work No. 3B and including cable crossings and situated within the co-ordinates of the export cable corridor area specified in the Offshore Order Limits Plan and Grid Co-ordinates Plan.

Project B Onshore Works

Redcar and Cleveland Borough Council—

Work No. 3B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications between mean low water springs and mean high water springs and connecting Work No. 2B with Work No. 4B;

Work No. 4B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground between Work No. 3B at mean high water springs and Work No. 5B and including the construction of a haul road and construction access;

Work No. 5B – a landfall transition joint bays and trenchless installation drill launch pits together with associated landfill works, construction compound connecting Work No. 4B with Work No. 6B including up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electric communications laid underground in ducts if necessary, connecting Work No. 4A with Work No. 6A including the construction of a haul road and construction access;

Work No 6B – two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground, in ducts if necessary, from Work No. 5B and running in a generally westerly direction for a distance of 7 kilometres to Work No. 7. Work No. 6B includes the construction of a haul road and construction access;

Work No 8B – up to three export cables for the transmission of high voltage alternating current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary from one of the electrical converter substation comprised in Work No. 7 and running in a westerly direction for a distance of 2 kilometres to the connection bay within the National Grid substation connection works comprising Work No. 9 and including the construction of a haul road and construction access;

Shared Works

Offshore

Work No. 2T – a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads alongside the cable corridors.

Onshore

Redcar and Cleveland Borough Council—

Work No. 7 – up to two electrical converter substations and compounds for converting high voltage direct current electricity carried by Work Nos. 6A and 6B to high voltage alternating current electricity, including landscaping and the construction of a temporary haul road and up to four export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground, in ducts if necessary and up to six export cables for the transmission of high voltage alternating current electricity together with fibre optic cables for the transmission of electronic communications laid underground in ducts if necessary;

Work No. 7L – a screening landform to the south west of Work No.7;

Work No. 8S –up to six export cables for the transmission of high voltage alternating current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary from the electrical converter substation comprised in Work No. 7 and running in a westerly direction for a distance of 575m to Work No. 8A and 8B including the construction of a haul road and construction access;

Work No. 9 – National Grid substation connection works connecting Work No. 8A and Work No. 8B to the transmission network and comprising up to six export cables for the transmission of high voltage alternating current electricity, fibre optic cables for the transmission of electronic communications, connection bays within National Grid substation incorporating located above ground and including connection bays within National Grid substation incorporating isolation switchgear, circuit bay equipment, overhead tubular connectors and switching and measuring equipment located above and below ground;

Work No. 10A – access road from (Coast Road (A1085) to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10B – access road from (Redcar Road) to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10C – access from the A174 to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10D – access road from the A174 to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10E – access road from Grewgrass Lane to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10F – access road from Fishponds Road (B1269) to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10G – access road from Fishponds Road (B1269) to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10H – access road from the intersection of A174 and A1042 to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10I – access road to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 6A up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 6B up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary

Work No. 10J – access road to provide construction and maintenance access from the public highway to the development site. Where shared with Work No. 8A up to three export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary. Where shared with Work No. 8B up to three export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid underground, in ducts if necessary;

Work No. 10K – access road from the public highway High Street (B1380) to provide construction and maintenance access from the public highway to the development site.

In connection with Work Nos. 3A, 4A, 5A, 6A, 7, 7L, 8A, 8S, 9, 10A to 10K the undertaker is granted development consent for the further associated development shown on the plans referred to in the requirements, or approved pursuant to the requirements, including—

(a) ramps, means of access and footpaths;

(b) bunds, embankments, swales, landscaping and boundary treatments;

(c) habitat creation;

(d) boreholes;

(e) jointing bays, manholes and other works associated with cable laying including trenchless installation works beneath watercourses roads and other obstructions;

(f) water supply works, foul drainage provision and surface water management systems and culverting;

(g) temporary structures to facilitate the crossing of watercourses including bailey bridges;

(h) construction lay down areas and compounds and their restoration;

(i) works to remove, reconstruct or alter the position of apparatus including mains, sewers, drains, cables and pipelines; and

(j) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the works assessed by the Environmental Statement.

In connection with Work Nos. 3B, 4B, 5B, 6B, 7, 7L, 8B, 8S, 9, 10A to 10K, the undertaker is granted development consent for the further associated development shown on the plans referred to in the requirements, or approved pursuant to the requirements, including—

(a) ramps, means of access and footpaths;

(b) bunds, embankments, swales, landscaping and boundary treatments;

(c) habitat creation;

(d) boreholes;

(e) jointing bays, manholes and other works associated with cable laying including trenchless installation works beneath watercourses roads and other obstructions;

(f) water supply works, foul drainage provision and surface water management systems and culverting;

(g) temporary structures to facilitate the crossing of watercourses including bailey bridges;

(h) construction lay down areas and compounds and their restoration;

(i) works to remove, reconstruct or alter the position of apparatus including mains, sewers, drains, cables and pipelines; and

(j) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the works assessed by the Environmental Statement.

PART 2

Ancillary Works

In relation to the Project A Offshore works, the Project B Offshore works and Work No. 2T comprised in the shared works, works comprising—

(a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;

(b) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;

(c) temporary works for the protection of land or structures affected by the authorised development;

(d) cable protection, scour protection or dredging;

(e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping; and

(f) the removal, reconstruction or alteration of the position of subsea cables and pipelines.

PART 3

Requirements

Interpretation

1. In this Part of this Schedule—

"the CAA" means the Civil Aviation Authority constituted by the Civil Aviation Act 1982;

"HAT" means highest astronomical tide;

"highest astronomical tide" means the highest level which can be predicted to occur under average meteorological conditions;

"highway authority" has the same meaning as in the 1980 Act;

"offshore works" means Work Nos. 1A, 1B, 2A, 2B, and 2T and any related associated development;

"onshore works" means Work Nos. 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7, 7L, 8A, 8B, 8S, 9 and 10A to 10K and any related associated development;

"stages" means each of the following stages of the onshore works which may be constructed in sequential order or otherwise—

Stage 1 - Work Nos. 3A, 4A and 5A;

Stage 2 - Work Nos. 3B, 4B and 5B;

Stage 3 - Work Nos. 6A, 8A and 10A, 10B, 10C, 10D, 10E, 10F, 10G,10H, 10I and 10K;

Stage 4 - Work Nos. 6B, 8B and 10A, 10B, 10C, 10D, 10E, 10F, 10G,10H, 10I and 10K;

Stage 5 - Work No. 7 and 7L, 10H and 10I;

Stage 6 - Work No. 8S, 8A, 10H, 10I, 10J and 10K;

Stage 7 - Work No. 8S, 8B, 10H, 10I, 10J and 10K; and

Stage 8 - Work No. 9, 10H, 10I, 10J and 10K.

"UK Hydrographic Office" means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset TA1 2DN.

Time limits

2.—(1) Project A is to commence no later than the expiration of seven years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

(2) Project B is to commence no later than the expiration of seven years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

(3) The shared works is to commence no later than the expiration of seven years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

Detailed offshore design parameters

3.—(1) No wind turbine generator forming part of the authorised development may—

(a) exceed a height of 315 metres when measured from HAT to the tip of the vertical blade;

(b) exceed a rotor diameter of 215 metres;

(c) be less than a multiple of six times the rotor diameter from the nearest wind turbine generator in any direction being not less than 750 metres measured between turbines; and

(d) have a distance of less than 26 metres between the lowest point of the rotating blade of the wind turbine generator and the level of the sea at HAT.

(2) The total rotor swept area forming part of the authorised development within Work 1A must not exceed 4.35km2.

(3) The total rotor swept area forming part of the authorised development within Work 1B must not exceed 4.35km2.

(4) References to the location of a wind turbine generator forming part of the authorised development are references to the centroid point at the base of the turbine.

4.—(1) No meteorological station lattice tower forming part of the authorised development may exceed a height of 315 metres above HAT.

(2) Meteorological mast foundation structures forming part of the authorised development must be of one or more of the following foundation options: monopole, multileg, gravity base or floating structure secured by chain and anchor.

(3) No meteorological mast foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than four driven piles;

(b) in the case of single pile structures, have a pile diameter of greater than 10 metres and employ a hammer energy during installation of greater than 2,300kJ; and

(c) in the case of two or more pile structures, have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 1,900kJ.

(4) No Meteorological mast foundation may exceed—

(a) A seabed footprint area (excluding scour protection) more than 1,735m2;

(b) a seabed footprint area of (including subsea/scour protection) more than 4,657m2; and

(c) A width of main supporting structure more than 51.5m.

5.—(1) The total number of offshore platforms within Work 1A forming part of the authorised development must not exceed seven comprising of—

(a) up to four offshore collector platform(s);

(b) an offshore converter platform;

(c) up to two offshore accommodation or helicopter platform(s); and

(d) or any of the platforms comprised in (1)(a) to (c) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundation.

(2) The total number of offshore platforms within Work 1B forming part of the authorised development must not exceed seven comprising of—

(a) up to four offshore collector platform(s);

(b) an offshore converter platform;

(c) up to two offshore accommodation or helicopter platform(s); and

(d) or any of the platforms comprised in (2)(a) to (c) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundation.

(3) The dimensions of any offshore collector platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 75 metres in length;

(b) 75 metres in width; and

(c) 85 metres in height above HAT.

(4) The dimensions of any offshore converter platform forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(5) The dimensions of any offshore accommodation or helicopter platform(s) forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(6) The dimensions of any combined platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(7) Offshore platform foundation structures forming part of the authorised development must be one or more of the following foundation options: gravity base or multileg.

(8) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than twenty four driven piles; and

(b) have a pile diameter of greater than 2.75 metres and employ a hammer energy during installation of greater than 1,900kJ.

(9) Within Work No. 1A the maximum seabed footprint area per offshore foundation (excluding scour protection) forming part of the authorised development must not exceed—

(a) offshore collector platform must not exceed 5,625m2;

(b) offshore converter platform must not exceed 12,500m2; and

(c) offshore accommodation or helicopter platform must not exceed 12,500m2.

(10) Within Work No. 1B the maximum seabed footprint area per offshore foundation (excluding scour protection) forming part of the authorised development must not exceed—

(a) offshore collector platform must not exceed 5,625m2;

(b) offshore converter platform must not exceed 12,500m2; and

(c) offshore accommodation or helicopter platform must not exceed 12,500m2.

(11) No offshore collector platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 9,025m2.

(12) No offshore converter platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(13) No offshore accommodation or helicopter platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

6.—(1) Wind turbine generator foundation structures forming part of the authorised development must be of one or more of the following foundation options: monopole, multileg or gravity base.

(2) No wind turbine generator foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than six driven piles;

(b) in the case of single pile structures have a pile diameter of greater than 12 metres and employ a hammer energy during installation of greater than 3,000kJ; and

(c) in the case of two or more pile structures have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 2,300kJ.

(3) No wind turbine generator foundation forming part of the authorised development may have—

(a) a width of main supporting structure more than 61m;

(b) a seabed footprint area (excluding scour protection) more than 2,376 m2; and

(c) a seabed footprint area of (including subsea/scour protection) more than 5,675m2.

(4) The foundations for wind turbine generators are to be in accordance with the wave reflection coefficient values as set out at Table 3.6 within Chapter 5 and Appendix 5.B Dogger Bank Teesside A & Foundation Characterisation Study of the Environmental Statement.

7.—(1) Within Work No. 1A wind turbine generator foundations forming part of the authorised development must not exceed—

(a) 1,005,300m2 of total seabed footprint;

(b) 1,084,850m3 volume of subsea/scour protection material; and

(c) 755,400m2 total seabed footprint area of subsea/scour protection.

(2) Within Work No. 1B wind turbine generators forming part of the authorised development must not exceed—

(a) 1,005,300m2 of total seabed footprint;

(b) 1,084,850m3 volume of subsea/scour protection material; and

(c) 755,400m2 total seabed footprint area of subsea/scour protection.

8.—(1) The total footprint of foundation structures (excluding mooring buoys) within Work 1A (including scour protection and drill arising deposits) forming part of the authorised development must not exceed 1,116,850m2.

(2) The total footprint of foundation structures (excluding mooring buoys) within Work 1B (including scour protection and drill arising deposits) forming part of the authorised development must not exceed 1,116,850m2.

9.—(1) Within Work No. 1A, 2A and 3A the High Voltage Direct Current cables forming part of the authorised development must not exceed—

(a) the number of two;

(b) a fibre optic cable; and

(c) the total length of 573.2km.

(2) Within Work No. 1A and 2A the High Voltage Direct Current cables forming part of the authorised development must not exceed—

(a) the cable protection (excluding cable crossings) area of 2.57 km2; and

(b) the cable protection (excluding cable crossings)volume of 2,496,785 m3.

(3) Within Work No. 1B, 2B and 3B the High Voltage Direct Current cables forming part of the authorised development must not exceed—

(a) the number of two;

(b) a fibre optic cable; and

(c) the total length of 484.4 km.

(4) Within Work No. 1B and 2B the High Voltage Direct Current cables forming part of the authorised development must not exceed—

(a) the cable protection (excluding cable crossings) area of 2.31km2; and

(b) the cable protection (excluding cable crossings)volume of 242,473m3.

10.—(1) Within Work No. 1A the High Voltage Alternating Current cables forming part of the authorised development must not exceed—

(a) the length of 1,270km;

(b) the cable protection (excluding cable crossings) area of 660,000m2;

(c) the cable protection (excluding cable crossings) volume of 413,000m3;

(2) Within Work No. 1B the High Voltage Alternating Current cables forming part of the authorised development must not exceed—

(a) the length of 1,270km;

(b) the cable protection (excluding cable crossings) area of 890,000m2;

(c) the cable protection (excluding cable crossings) volume of 572,000m3.

11.—(1) Within Work No. 1A the High Voltage Alternating Current cable crossings forming part of the authorised development must not exceed—

(a) the number of 24;

(b) the cable crossing material volume of 132,700m3; and

(c) the total footprint of 147,100m2.

(2) Within Work No. 1B the High Voltage Alternating Current cable crossings forming part of the authorised development must not exceed—

(a) the number of 24;

(b) the cable crossing material volume of 132,700 m3; and

(c) the total footprint of 147,100m2.

12.—(1) Within Work No. 1A and 2A the High Voltage Direct Current cable crossings must not exceed—

(a) the number of 16;

(b) the cable crossing material volume of 88,450 m3; and

(c) the total footprint of 98,100m2.

(2) Within Work No. 1B and 2B the High Voltage Direct Current cable crossings must not exceed—

(a) the number of 16;

(b) the cable crossing material volume of 88,450m3; and

(c) the total footprint of 98,100m2.

Layout Rules

13.—(1) The positions of wind turbine generators and offshore platform(s) must be arrayed in accordance with parameters applicable to Work Nos. 1A and 1B specified in requirement 3 and the principles within section 5.2 of Chapter 5 of the Environmental Statement.

(2) No construction of any wind turbine generator or offshore platform forming part of Project A Offshore works may commence until the MMO has agreed in writing, following consultation with Trinity House and the MCA, the "Array Location and Layout Plan" for Project A Offshore works.

(3) No construction of any wind turbine generator or offshore platform forming part of Project B Offshore works may commence until the MMO has agreed in writing, following consultation with Trinity House and the MCA, the "Array Location and Layout Plan" for Project B Offshore works.

(4) Unless otherwise agreed between the undertaker and the MMO, the construction of the wind turbine generators and offshore platforms must be carried out in accordance with the details approved under requirement 13(2) and 13(3). Any agreement with the MMO under this requirement 13(4) must still comply with requirement 13(1).

Aviation Lighting

14. Except as otherwise required by Trinity House under condition 25 of the deemed marine licences set out in Schedule 8 Part 1A and 1B and 2A and 2B and condition 21 of the deemed marine licences set out in Schedule 8 Part 3A and 3B and 4A and 4B the undertaker must exhibit such lights, with such shape, colour and character as required by Air Navigation Order 2009 (S.I. 2009/3015) or as directed by the Civil Aviation Authority or the Ministry of Defence.

Offshore Decommissioning

15. No offshore works may commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State/the notice pursuant to section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval. The submitted scheme shall accord with the principles set out in the Outline Decommissioning Statement.

Offshore safety management

16.—(1) Offshore works must not commence until the MMO, in consultation with the MCA, has given written approval for an Emergency Response and Co-operation Plan (ERCoP) which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues." The ERCoP must include the identification of a point of contact for emergency response.

(2) The ERCoP must be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA but nothing in this sub paragraph shall have the effect of removing any obligation to secure an ERCoP under this requirement.

(3) No part of the authorised scheme seaward of MHWS is to commence until the Secretary of State, in consultation with the MCA, has given written approval for an Emergency Response and Co-operation Plan (ERCoP) which includes full details of the emergency co-operation plans for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN 371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues".

Stages of authorised development onshore

17.—(1) The onshore works may not be commenced until a written scheme setting out the phasing of construction of each stage of the onshore works has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must be implemented as approved.

Detailed design approval onshore

18. The onshore works must be carried out in accordance with the approved plans submitted with the application and listed below, save in respect of any part of such plans which are indicative or expressly state that they do not show details for approval—

(a) the Onshore Order Limits and Grid Co-ordinates Plan;

(b) Works plans (onshore) (application document reference 2.4.2).

19.—(1) Except where the onshore works are carried out in accordance with the plans (or relevant parts of the plans) listed in requirement 18, no stage of the onshore works may commence until details of the layout, scale, levels and external appearance of same so far as those details are now shown on the authorised plans, have been submitted to and approved in writing by the relevant planning authority. This must include a section showing cable depths for Work Nos. 4A and 5A and 4B and 5B.

(2) No building forming part of Work No. 7 may exceed 20 metres in height above the floor level for that location, excluding lightning protection.

Provision of landscaping

20. No stage of the onshore works may commence until a written landscaping scheme and associated work programme in relation to each stage of the onshore works has been submitted to

and approved in writing by the relevant planning authority. Each landscaping scheme must be drawn up in accordance with the relevant measures contained within the draft landscaping scheme and include details of all proposed hard and soft landscaping works, including—

(a) location, number, species, size and planning density of any proposed planting, including any trees;

(b) cultivation, importing of materials and other operations to ensure plant establishment;

(c) proposed finished ground levels;

(d) minor structures, such as furniture, refuse or other storage units, signs and lighting;

(e) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;

(f) details of existing trees to be retained, with measures for their protection during the construction period;

(g) retained historic landscape features and proposals for restoration, where relevant; and

(h) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

21.—(1) All landscaping works must be carried out in accordance with a landscaping scheme approved under requirement 20, unless otherwise agreed in writing by the relevant planning authority, and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise agreed in writing by the relevant planning authority.

Fencing and other means of enclosure

22.—(1) No stage of the onshore works may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that stage have been submitted to and approved in writing by the relevant planning authority.

(2) All construction sites must remain securely fenced at all times during construction of the onshore works.

(3) Any temporary fencing must be removed on completion of the relevant work.

(4) Any approved permanent fencing in relation to Work No. 7 must be completed before the relevant work is brought into use.

Highway accesses

23.—(1) No stage of the onshore works must commence until for that stage, written details of the siting, design, layout and any access management measures for any new permanent or temporary means of access to or from a public highway to be used by vehicular traffic, or any alteration to an existing means of access to or from a public highway used by vehicular traffic, has, after consultation with the highway authority, been submitted to and approved in writing by the relevant planning authority.

(2) No stage of the onshore works may commence until for that stage, written details identifying the routes and accesses for operational maintenance has, following consultation with the highway authority, been submitted to and approved in writing by the relevant planning authority.

(3) All highway accesses must be constructed, maintained and removed in accordance with the approved details.

Surface and foul water drainage

24.—(1) No stage of the onshore works may commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) for that stage have, following consultation with the relevant sewerage and drainage authorities and the Environment Agency, been submitted to and approved in writing by the relevant planning authority.

(2) The surface water drainage system works must restrict surface water discharge to no more than the greenfield run off rate (1.62 l/s) in line with the recommendations of the Flood Risk Assessment (Appendix B to Chapter 24 of the Environmental Statement).

(3) The submitted details must —

(a) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site (surface water drainage scheme);

(b) include a timetable for implementation (foul surface and water schemes); and

(c) provide a management and maintenance plan for the lifetime of the purposes schemes (foul and surface water management).

(4) The surface and foul water drainage systems must be constructed, managed and maintained in accordance with the approved details.

Archaeology

25.—(1) No stage of the onshore works is to commence until the implementation of a programme of archaeological work has been secured in relation to that stage in accordance with a written scheme of archaeological investigation that has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must —

(a) set out a pre-construction programme of archaeological evaluation which defines the extent, character and significant archaeological sites and the extent of areas that do not require detailed excavation. The results of the evaluation are to inform subsequent mitigation strategies;

(b) set out the programme and methodology site investigation and recording;

(c) set out provision for the monitoring of geotechnical test pits in areas of significance as defined by the archaeological evaluation;

(d) set out the programme for post investigation assessment, the results of which may inform the scope of analysis;

(e) provide for analysis of the site investigation and recording;

(f) provide for publication and dissemination of the analysis and records of the site investigation; and

(g) nominate a competent person or organisation to undertake the works set out within the written scheme of investigation.

(3) No stage of the onshore works may commence until in relation to the relevant work the relevant site investigation has been completed as approved, and such completion has been approved in writing by the relevant planning authority.

(4) No stage of the onshore works may be brought into commercial operation (excluding commissioning) until the site investigation and post investigation assessment have been completed in accordance with the programme in the approved scheme and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

(5) The written scheme in relation to the relevant work must be carried out in accordance with the approved scheme.

Code of Construction Practice (CoCP)

26.—(1) No stage of the onshore works is to commence until a code of construction practice (CoCP) in accordance with the outline Code of Construction Practice has been submitted to and approved in writing by the relevant planning authority and as appropriate the Highways Agency, following consultation with the relevant statutory nature conservation body.

(2) The CoCP must be written to reflect and ensure delivery of the construction phase mitigation measures included within the Environmental Statement and must include consideration of, but not be limited to, the following matters during construction of the onshore works—

(a) construction noise and vibration management;

(b) air quality including dust management;

(c) sustainable waste management during construction;

(d) traffic management and materials storage on site;

(e) water management (surface water and groundwater);

(f) the mechanism for the public to communicate with the construction teams, including contact details;

(g) land use and agriculture, including the management, excavation and removal of soils, land drainage, land quality and biosecurity;

(h) a method statement for the crossing of watercourses;

(i) method statements for horizontal directional drilling activities of highways, railways and apparatus within the Wilton Complex;

(j) plans for public and private access across the development Order limits, including details of the temporary re-routing of public rights of way during the construction of the authorised development including the provision of signage and other information alerting the public to the construction works and any re-routing; and

(k) management and mitigation of artificial light emissions.

Construction Environmental Management Plan (CEMP)

27.—(1) Prior to the commencement of each stage of the onshore works a Construction Environmental Management Plan (CEMP) for that stage, drafted in accordance with the principles set out in the approved CoCP, must be submitted to and approved by the relevant planning authority.

(2) All remediation, construction and commissioning works must be undertaken in accordance with the CoCP and CEMP, or any variation or replacement thereof previously approved by the relevant planning authority.

Construction hours

28.—(1) Construction work for the onshore works and any construction-related traffic movements to or from the site of the relevant work must not take place other than between 0700 hours and 1900 hours Monday to Saturday, with no activity on Sundays, public or bank holidays, save—

(a) where continuous periods of operation are required, such as concrete pouring and drilling;

(b) for the delivery of abnormal loads to the onshore works, which may cause congestion on the local road network;

(c) where works are being carried out on the foreshore;

(d) where works are required to be carried out in an emergency; or

(e) as otherwise agreed in writing with the relevant planning authority save where as required outside of these hours pursuant to details submitted and approved under any other requirement.

(2) All construction operations which are to be undertaken outside the hours specified in paragraph (1) must be agreed with the relevant planning authority in writing in advance, and must be carried out within the times agreed in writing with the relevant planning authority.

Control of noise during operational phase

29.—(1) The noise emanating from the operation of Work No. 7 (including transformers, cooling fans, switch gear and power lines) must each or together not exceed operational noise levels of 42dB at any residential receptor or 46 dB at any non-residential receptor identified on the works plans and below—

(a) Residential receptors

(i) 7 Grange Estate;

(ii) 10 Grange Estate;

(iii) 20 Grange Estate; and

(iv) Lazenby Grange Farmhouse.

(b) Non-Residential receptors

(i) Wilton Complex Office Building

(ii) Wilton Golf Club; and

(iii) Wilton Primary School.

(2) Noise measurements must be expressed as free field 5 minute L(A)r values.

Control of artificial light emissions

30.—(1) Work No. 7 is not to be brought into operation until a written scheme for the management and mitigation of artificial light emissions during the operation of Work No. 7 has been submitted to and approved in writing by the relevant planning authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented and maintained during the operation of the onshore works as approved.

Construction traffic routing and management plans

31.—(1) No stage of the onshore works is to commence until written details of a construction traffic management plan (CTMP) and Construction Travel Plan (CTP), to be used for the management of construction traffic, has been submitted to and approved in writing by the relevant planning authority and the Highways Agency.

(2) The CTMP and CTP is to include details (including agreed routes) for abnormal indivisible loads (AIL) that may be delivered by road (or confirmation that no AILs are required for construction of the authorised development). The details thereafter approved must be adhered to at all times during the time when AILs are to be transported to or from the authorised development by road.

(3) Notices must be erected and maintained throughout the period of construction at construction site exits, in accordance with the CTMP indicating to drivers the routes agreed by the relevant planning authority for traffic entering and leaving sites.

(4) Any drilling works that are to be undertaken under highways must be carried out in accordance with Highway Agency's Design Manual for Roads and Bridges.

Port Access and Transport Plan

32.—(1) No licensed activities or any phase of those activities seaward of MHWS must commence until (insofar as relevant to that activity or phase of activity) a Port Access and Transport Plan (PATP) for the onshore port-related traffic to and from the selected base port or ports for construction, operation or both has been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority, or the relevant planning authority has confirmed in writing, after consultation with the relevant highway authority, that no traffic management plan is required.

(2) All Port Access and Transport Plans (PATPs) must be implemented as approved at all times specified within the relevant traffic management plan during the construction, operation or both of the authorised development.

(3) For the purposes of this requirement— "relevant highway authority" means the highway authority or authorities in whose area the relevant port is located;

"relevant planning authority" means the local planning authority or authorities in whose area the relevant port is located;

"selected base port" or "ports" means a port or ports situated in England or Wales and used by management personnel for construction of the authorised project or for the ongoing operational management of the authorised project.

European protected species – onshore

33.—(1) No stage of the onshore works is to commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by any part of the onshore works or in any of the trees to be lopped or felled as part of the onshore works.

(2) Where a European protected species is shown to be present, the stage of the onshore works likely to affect the species may not begin until, after consultation with the relevant statutory nature conservation body and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) The onshore works must be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the relevant planning authority.

(4) "European protected species" has the same meaning as in regulations 40 and 44 of the Conservation (Natural Habitats, &c.) Regulations 2010(**a**).

Restoration of land used temporarily for construction

34. Subject to article 29 of this Order (temporary use of land for carrying out the authorised project), any land landward of mean low water springs within the Order limits which is used temporarily for construction of the relevant stage of the onshore works, and not ultimately incorporated in permanent works or approved landscaping, is to be reinstated to its former condition, or such condition as the relevant planning authority may approve, within six months of completion of the onshore works, or such other period as the relevant planning authority may approve.

Interference with telecommunications

35.—(1) In the event that the operation of the onshore works gives rise to interference with telecommunications or television equipment at nearby residential properties, a scheme to rectify the situation in relation to the onshore works must be submitted to the relevant planning authority for approval.

(**a**) S.I. 2010/490.

(2) The scheme must provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Town and Country Planning (Uses Classes) Order 1987 (as amended)(a) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the developer by the relevant planning authority within twelve months of commercial operation.

(3) Where impairment is determined by the qualified television engineer to be attributable to the development, mitigation works must be carried out in accordance with the scheme which has been approved in writing by the relevant planning authority. The scheme must be carried out in accordance with the approved details.

Onshore decommissioning

36.—(1) Upon the cessation of commercial operation of the onshore works (in whole or in part), a scheme for the demolition and removal of the onshore works (in whole or in part), and the final proposed condition of the relevant land, including a proposed timetable, must be submitted to the relevant planning authority for approval. The proposed scheme must be based on the onshore decommissioning statement submitted with the application.

(2) The scheme for decommissioning shall be implemented as approved.

Requirement for written approval

37. Where under any of the above requirements the approval or agreement of the Secretary of State, the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

38.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or approval authority as specified in the requirement (the "discharging authority"), the approved details must be carried out as approved unless an amendment or variation is agreed in advance by the discharging authority, in accordance with sub-paragraph (2), and in consultation with anybody specified in the relevant requirement.

(2) Where any requirement specifies "unless otherwise agreed" by the discharging authority such agreement is not to be given except where it has been demonstrated to the satisfaction of the discharging authority that the change sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.

(3) The approved details shall include any amendments that may subsequently be agreed by the discharging authority.

Restricted Work Area

39. No wind turbine generator or offshore platform forming part of the authorised development must be constructed within 300m of the international boundary. This area is hatched black and identified as a restricted work area on the offshore works plans.

SCHEDULE 2

Article 14

Streets subject to street works

Area	*Street subject to street works*
Redcar and Cleveland	Coast Road (A1085)

Redcar and Cleveland	National Cycle Network Route 1
Redcar and Cleveland	Green Lane
Redcar and Cleveland	Public Byway (116/19/1)
Redcar and Cleveland	Redcar Road
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)
Redcar and Cleveland	Public footpath (129/30/1)
Redcar and Cleveland	A174
Redcar and Cleveland	Grewgrass Lane
Redcar and Cleveland	Grewgrass Lane (Stewardship bridleway)
Redcar and Cleveland	Fishponds Road (B1269)
Redcar and Cleveland	Public footpath (106/190/1)
Redcar and Cleveland	Greystone Road (A1053)
Redcar and Cleveland	Public footpath (102/193/2)
Redcar and Cleveland	Public footpath (102/54/1)
Redcar and Cleveland	Public footpath (102/194/1)
Redcar and Cleveland	Coast Road (A1085)
Redcar and Cleveland	National Cycle Network Route 1
Redcar and Cleveland	Green Lane
Redcar and Cleveland	Public Byway (116/19/1)
Redcar and Cleveland	Redcar Road
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)

SCHEDULE 3

Article 15

Streets to be temporarily stopped up

Area	*Streets to be temporarily stopped up*
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)
Redcar and Cleveland	Public footpath (129/30/1)

SCHEDULE 4

Article 16

Access to works

Area	*Access to works*

Area	*Access to works*
Redcar and Cleveland	Coast Road (A1085)
Redcar and Cleveland	Redcar Road
Redcar and Cleveland	A174 between the roundabout off A174/Grewgrass Lane/Redcar Lane and the roundabout off A174/Longbeck Road/Gurrey Street, near land known as Mickle Dales
Redcar and Cleveland	Grewgrass Lane
Redcar and Cleveland	Fishponds Road (B1269)
Redcar and Cleveland	Junction off A174 and Kirkleatham Lane (A1042)
Redcar and Cleveland	Off the east bound sliproad off A174 (not named) into the Wilton Complex, which is located between Lazenby and the roundabout of A174/A1042
Redcar and Cleveland	High Street (B1380)

SCHEDULE 5

Article 25

Land in which only new rights etc. may be acquired

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which rights over land may be acquired*
PART 1 - acquisition of new rights	
1, 2B, 3B, 12B, 12C, 13B, 13D, 17B, 18, 19B, 21B, 25B, 26B, 29B, 32B, 33Bii , 36B, 41B, 43B, 44B, 46B, 49B, 52B	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 3
24B	New right for the installation, inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 3
60B, 62B, 63B	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of up to three export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 3
2A, 3A, 4i , 12A, 13A, 13C, 17A, 19A, 21A, 25A, 26A, 29A, 32A, 33Aii , 36A, 41A, 43A, 44A, 46A, 49A, 52C	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 2
24C	New right for the installation, inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 2
60A, 62A, 63A, 68	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of up to three export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which rights over land may be acquired*
	communications for the benefit of Bizco 2
10, 11, 14, 15, 16, 24A, 28, 31, 35, 38, 39, 48, 50, 52A, 53, 54	New right for the installation, inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 2 and Bizco 3
56	New right for the installation, inspection, maintenance, renewal, repair and replacement of landscaping for the benefit of Bizco 2 and Bizco 3
69, 70, 71, 72, 73	New right for the construction of new connection bays within the National Grid substation containing isolation switchgear and electrical equipment for the connection of the export cables to the transmission network for the benefit of Bizco 2 and Bizco 3
59, 64, 65, 66, 74, 75, 76, 77, 78	New right for: 1) the construction, inspection, maintenance, renewal, repair and replacement of the new connection bays within the National Grid substation; and 2) the installation, inspection, maintenance, renewal, repair and replacement for up to three export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications in each case for the benefit of Bizco 2 and Bizco 3
PART 2 - acquisition of new rights (Bizco 2 may exercise a power to acquire rights conferred by paragraph (1) over that land)	
9D, 13B, 30C, 40C, 49B	New right for the installation, inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 2
67E	New right for: 1) the construction, inspection, maintenance, renewal, repair and replacement of the new connection bays within the National Grid substation; and 2) the installation, inspection, maintenance, renewal, repair and replacement for up to three export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications in each case for the benefit of Bizco 2
PART 3 - acquisition of new rights (Bizco 3 may exercise a power to acquire rights conferred by paragraph (1) over that land)	
9C, 13A, 23C, 27C, 34C, 49A	New right for the installation, inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 3
58G, 67C	New right for: 1) the construction, inspection, maintenance, renewal, repair and replacement of the new connection bays within the National Grid substation; and 2) the installation, inspection, maintenance, renewal, repair and replacement for up to three export cables for the transmission of high

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which rights over land may be acquired*
	voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications in each case for the benefit of Bizco 3

SCHEDULE 6

Article 29

Land of which temporary possession may be taken

(1) Location	*(2) Plot Reference Number(s) shown on Land Plans*	*(3) Purpose for which temporary possession may be taken*	*(4) Relevant part of the authorised development*
Land Plans - Sheet 2			
In the administrative area of Redcar and Cleveland Borough Council	79	Work site and access	Work No.6A
In the administrative area of Redcar and Cleveland Borough Council	80	Work site and access	Work No.6B
In the administrative area of Redcar and Cleveland Borough Council	81	Work site and access	Work No.6A
In the administrative area of Redcar and Cleveland Borough Council	82	Work site and access	Work No.6B
Land Plans - Sheet 4			
In the administrative area of Redcar and Cleveland Borough Council	84	Work site and access	Work No.6A
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SCHEDULE 7

Article 39

Deemed licences under The Marine and Coastal Access Act 2009

PART 1A

Licensed Marine Activities – Marine Licence 1: Project A Offshore (Generation – Work Nos. 1A and 2T)

Interpretation

1.—(1) In this licence—

"the 2004 Act" means the Energy Act 2004;

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009(**a**);

"Annex 1 Habitat" means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

"Array Location and Layout Plan" means the plan which details the specification and layout of all wind turbine generators, HVAC cables, substations, platforms and meteorological masts;

"authorised deposits" means the substances and articles specified in paragraph 2(3);

"authorised scheme" means Work No. 1A and 2T described in paragraph 2 of this licence or any part or phase of those works;

"Bizco 2" means Doggerbank Project 2 Bizco Limited (Company number 07791977) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

"cable crossings" means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

"cable protection" means the measures to protect cables from physical damage and exposure due to loss of seabed sediment, including, but not limited to, the use of bagged solutions filled

with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“cable specification and installation plan” means the document that includes the technical specification of offshore cables, a stage cable laying plan and burial risk assessment, a scope protection management and cable protection plan (if required), and details of post lay survey;

“chemical risk assessment (CRA)” means a document that includes information regarding how chemicals are used, stored and transported and submitted to the MMO for approval prior to construction;

“co-existence plan” means the plan which forms part of the fisheries liaison plan and details how the project will be constructed and operated taking account of the fisheries industry;

“combined platform” means a single offshore platform combining two or more of the following—

(a) an offshore collector platform;

(b) an offshore converter platform;

(c) an offshore accommodation or helicopter platform;

“commence” means the first carrying out of any part of the licensed activities except for the pre-construction surveys and “monitoring and commencing” must be construed accordingly;

“commercial operation” means in relation to the Project A Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

“condition” means a condition in Part 1B of this licence;

“construction and monitoring programme” means the programme which provides details on the construction start date, timings for mobilisation and proposed pre-construction survey(s);

“construction method statement (CMS)” means the document or documents that provide details of the final construction methods to be used;

“disposal scenario statement” means the document which sets out what would happen to drill arisings/spoil under different construction scenarios, including monitoring or relocation of spoil;

“Emergency Response and Co-operation Plan (ERCoP)” means the document which provides details of the emergency response procedures;

“environmental management and monitoring plan (EMMP)” means the document that details minimum environmental management requirements expected of all contractors and subcontractors, with regards to marine pollution contingency, waste management and disposal, chemical risk assessment and relevant fisheries liaison matters;

“fisheries liaison officer (FLO)” means a person appointed by the undertaker charged with communication and liaison with the fishing industry as appropriate through the lifetime of the project;

“fisheries liaison plan (FLP)” means the plan which details how each undertaker of the projects will consult with fisheries stakeholders;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“gravity base foundation” means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may

include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbines and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

"HAT" means highest astronomical tide;

"highest astronomical tide" means the highest level which can be predicted to occur under average meteorological conditions;

"In Principle Monitoring Plan" means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

"intelligent scour management plan" means the plan produced following pre-construction surveys identifying where scour protection is most likely to be required;

"the Kingfisher Fortnightly Bulletin" means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

"licensed activities" means the activities specified in Part 1A of this licence;

"maintain" includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) of the Order and any component part of any wind turbine generator, offshore platform, meteorological station, electricity or communication cable described in Part 1 of Schedule 1 (authorised development) of the Order (but not including the removal or replacement of foundations) to the extent outlined within the post construction maintenance plan, and "maintenance" must be construed accordingly;

"marine mammal mitigation protocol (MMMP)" means the plan defines mitigation to minimise potential impacts on marine mammals, and describes any associated monitoring (if required);

"the Marine Management Organisation" or "MMO" means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor to its function;

"marine pollution contingency plan (MPCP)", a component of the Environmental Management and Monitoring Plan (EMMP) means the plan that addresses risks, methods and procedures to deal with any potential marine pollution;

"MCA" means the Maritime and Coastguard Agency or any successor to its function;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"meteorological mast" or "meteorological station" means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

"monopole foundation" means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers or abrupt steps. Sub types for wind turbine generators and meteorological stations, include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

"multileg foundation" means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include offshore platform jacket foundations

(potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

"notice to mariners" includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen's harbourmasters, government departments and harbour and pilotage authorities;

"offshore accommodation or helicopter platform" means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, small and large scale electrical power systems, J-tubes, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"offshore collector platform" means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"offshore converter platform" means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable High Voltage Direct Current transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"the Offshore Order Limits and Grid Co-ordinates Plan" means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

"offshore platform" means any of the following—

(a) an offshore accommodation or helicopter platform;

(b) an offshore collector platform;

(c) an offshore converter platform; or

(d) a combined platform

"the Order" means the Dogger Bank Teesside A and B Offshore Wind Farm Order 201X;

"the Order limits" means the limits shown on the Offshore Order Limits and Grid Co-ordinate Plan and the Onshore Order Limits and Grid Co-ordinates Plan;

"outline post construction maintenance plan" means the document certified as the outline post construction maintenance plan by the Secretary of State for the purposes of this Order;

"outline offshore archaeological written scheme of investigation" means the document certified as the outline offshore archaeological written scheme of investigation by the Secretary of State for the purposes of this Order;

"restricted work area" means restricted work area shown on the offshore works plan;

"scour protection" means protection against foundation scour. These measures include the use of bagged solutions filled with grout or other material, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

"scour protection management and cable protection plan" means the plan which details the foundation and cable protection requirements including installation methods;

"undertaker" means Bizco 2 or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"wind turbine generator" means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation, and

"written scheme of archaeological investigation (WSI)" means the written scheme which details the procedures for dealing with archaeological findings.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are to be taken to be Greenwich Mean Time (GMT);

(b) all coordinates are to be taken to be latitude and longitude decimal degrees to six decimal places. The datum system used is World Geodetic System 1984 datum (WGS84).

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence is—

(a) Marine Management Organisation
Marine Licensing Team
Lancaster House
Hampshire Court
Newcastle upon Tyne
Tyne and Wear
NE4 7YH
Email: marine.consents@marinemanagement.org.uk
Tel: 0300 123 1032

(b) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

(c) The United Kingdom Hydrographic Office
Admiralty Way
Taunton

Somerset
TA1 2DN
Tel: 01823 337 900;

(d) Marine and Coastguard Agency
Navigation Safety Branch
Bay 2/04
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9191;

(e) Natural England
Foundry House
3 Millsands
Riverside Exchange
Sheffield
S3 8NH
Tel: 0300 060 4911;

(f) English Heritage
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 057;

(5) For information only, the details of the local MMO office to the authorised scheme is—
Marine Management Organisation – Northern Marine Area
MMO Coastal Office
Neville House
Central Riverside
Bell Street
North Shields
Tyne and Wear
NE30 1LJ
Email: northshields@marinemanagement.org.uk
Tel: 0191 257 4520

Details of licensed marine activities

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions in Schedule 7 Part 1B—

(a) the deposit at sea of the substances and articles specified in paragraph (3) below;

(b) the construction of works specified in paragraph (2) in or over the sea and/or on or under the sea bed including the removal, reconstruction or alteration of the position of subsea cables and pipelines; and

(c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) Subject to sub- paragraph (6), such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 1A—

(a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundation situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (e) below;

Coordinates for the array area

Point	*Latitude (Decimal Degrees)*	*Longitude (Decimal Degrees)*
31	55.11790	2.57524
32	55.11860	3.09890
33	55.10690	3.09409
34	55.09071	3.08744
35	55.07452	3.08080
36	55.05832	3.07416
37	55.04213	3.06752
38	55.02594	3.06090
39	55.00974	3.05427
40	54.99487	3.04820
41	54.97803	3.04132
42	54.97735	3.04104
43	54.96115	3.03444
44	54.95485	3.03187
45	54.95510	3.01393
46	54.95556	2.97851
47	54.95562	2.97450
50	54.96011	2.57690

(b) a maximum of seven offshore platforms comprising the following:

(i) up to four offshore collector platform(s) situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(ii) an offshore converter platform situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iv) or any of the platforms comprised in Work No.1 (b)(i) to Work No.1A (b)(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;

(c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1A(a) either fixed to the seabed by monopole, multileg or gravity base type foundations or utilising a floating support structure anchored to the seabed;

(d) A network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—

(i) any of the wind turbine generators comprising Work No. 1A(a);

(ii) any of the wind turbine generators comprising Work No. 1A(a) and Work Nos. 1A (c);

(iii) any of the works comprising Work No. 1A(b) and Work No. 1A(c); and

(iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

(e) up to ten vessel mooring(s) situated within the array area specified in the table in Work No. 1A(a) consisting of a single floating buoy secured by chain and anchor anchored to the seabed.

Work No. 2T – a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads alongside the cable corridors.

Ancillary works in connection to the above-mentioned works comprising—

(a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;

(b) temporary or permanent buoys, beacons, fenders and other navigational warning on ship impact protection works;

(c) temporary works for the protection of land on structures affected by the authorised scheme;

(d) cable protection, scour protection or dredging; and

(e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping.

(f) 'ancillary works' to be limited to that within the scope of the works assessed by the Environmental Statement

(3) The substances or articles authorised for deposit at sea are—

(a) iron/steel/aluminium;

(b) stone and rock;

(c) concrete/grout;

(d) sand and gravel;

(e) plastic/synthetic;

(f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and

(g) marine coatings, other chemicals and timber.

(4) Subject to the licence conditions, this licence authorises the disposal of up to 968,789m3 of material of natural origin within Work No 1A produced during construction drilling and seabed preparation for foundation works and cable sandwave preparation works (Disposal Site Reference Number DG030)..

(5) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(6) The licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity may commence until a written decommissioning programme in accordance with an approved programme under section 105(2) of the 2004 Act, has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out any such works, the undertaker must notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

PART 1B

Conditions

Detailed offshore design parameters

3.—(1) No wind turbine generator forming part of the authorised development may—

(a) exceed a height of 315 metres when measured from HAT to the tip of the vertical blade;

(b) exceed a rotor diameter of 215 metres;

(c) be less than a multiple of six times the rotor diameter from the nearest wind turbine generator in any direction being not less than 750 metres measured between turbines; and

(d) have a distance of less than 26 metres between the lowest point of the rotating blade of the wind turbine generator and the level of the sea at HAT.

(2) The total rotor swept area forming part of the authorised development within Work 1A must not exceed 4.35km2.

(3) References to the location of a wind turbine generator forming part of the authorised development are references to the centroid point at the base of the turbine.

4.—(1) No meteorological station lattice tower forming part of the authorised development may exceed a height of 315 metres above HAT.

(2) Meteorological mast foundation structures forming part of the authorised development must be of one or more of the following foundation options: monopole, multileg, gravity base or floating structure secured by chain and anchor.

(3) No meteorological mast foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than four driven piles;

(b) in the case of single pile structures, have a pile diameter of greater than 10 metres and employ a hammer energy during installation of greater than 2,300kJ; and

(c) in the case of two or more pile structures, have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 1,900kJ.

(4) No Meteorological mast foundation may exceed—

(a) A seabed footprint area (excluding scour protection) more than 1,735m2;

(b) a seabed footprint area of (including subsea/scour protection) more than 4,657m2; and

(c) A width of main supporting structure more than 51.5m.

5.—(1) The total number of offshore platforms within Work 1A forming part of the authorised development must not exceed seven comprising of—

(a) up to four offshore collector platform(s);

(b) an offshore converter platform;

(c) up to two offshore accommodation or helicopter platform(s); and

(d) or any of the platforms comprised in (1)(a) to (c) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundation.

(2) The dimensions of any offshore collector platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 75 metres in length;

(b) 75 metres in width; and

(c) 85 metres in height above HAT.

(3) The dimensions of any offshore converter platform forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(4) The dimensions of any offshore accommodation or helicopter platform(s) forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(5) The dimensions of any combined platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(6) Offshore platform foundation structures forming part of the authorised development must be one or more of the following foundation options: gravity base or multileg.

(7) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than twenty four driven piles; and

(b) have a pile diameter of greater than 2.75 metres and employ a hammer energy during installation of greater than 1,900kJ.

(8) Within Work No. 1A the maximum seabed footprint area per offshore foundation (excluding scour protection) forming part of the authorised development must not exceed—

(a) offshore collector platform must not exceed 5,625m2;

(b) offshore converter platform must not exceed 12,500m2; and

(c) offshore accommodation or helicopter platform must not exceed 12,500m2.

(9) No offshore collector platform foundation will have a seabed footprint area of (including subsea/scour protection) of more than 9,025m2.

(10) No offshore converter platform foundation will have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(11) No offshore accommodation or helicopter platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(12) The number of vessels actively carrying out impact piling as part of the installation of driven pile foundations for the authorised scheme must at no time exceed two within Work No 1A.

6.—(1) Wind turbine generator foundation structures forming part of the authorised development must be of one or more of the following foundation options: monopole, multileg or gravity base.

(2) No wind turbine generator foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than six driven piles;

(b) in the case of single pile structures have a pile diameter of greater than 12 metres and employ a hammer energy during installation of greater than 3,000kJ; and

(c) in the case of two or more pile structures have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 2,300kJ.

(3) No wind turbine generator foundation forming part of the authorised development may have—

(a) a width of main supporting structure more than 61m;

(b) a seabed footprint area (excluding scour protection) more than 2,376 m2; and

(c) a seabed footprint area of (including subsea/scour protection) more than 5,675m2.

(4) The foundations for wind turbine generators must be in accordance with the wave reflection coefficient values as set out at Table 3.6 within Chapter 5 and Appendix 5.B Dogger Bank Teesside A & Foundation Characterisation Study of the Environmental Statement.

7. Within Work No. 1A wind turbine generator foundations forming part of the authorised development must not exceed—

(a) 1,005,300m2 of total seabed footprint;

(b) 1,084,850m3 volume of subsea/scour protection material; and

(c) 755,400m2 total seabed footprint area of subsea/scour protection.

8. The total footprint of foundation structures (excluding mooring buoys) within Work 1A (including scour protection and drill arising deposits) forming part of the authorised development must not exceed 1,116,850m2.

9. Within Work No. 1A the High Voltage Alternating Current cables forming part of the authorised development must not exceed—

(a) The length of 1,270km;

(b) The cable protection (excluding cable crossings) area of 660,000m2; and

(c) The cable protection (excluding cable crossings) volume of 413,000m3.

10. Within Work No. 1A the High Voltage Alternating Current cable crossings forming part of the authorised development must not exceed—

(a) The number of 24;

(b) The cable crossing material volume of 132,700m3; and

(c) The total footprint of 147,100m2.

11. Within Work Nos. 1A and 2A the High Voltage Direct Current cable crossing must not exceed—

(a) The number of 16;

(b) The cable crossing material volume of 88,450m3; and

(c) The total footprint of 98,100m2.

Layout Rules

12.—(1) The positions of wind turbine generators and offshore platform(s) must be arrayed in accordance with parameters applicable to Work No. 1A specified in condition 3 and the principles within section 5.2 of Chapter 5 of the Environmental Statement.

(2) No construction of any wind turbine generator or offshore platform forming part of the authorised scheme may commence until the MMO has agreed in writing, following consultation with Trinity House and the MCA, the “Array Location and Layout Plan”.

(3) The construction of the wind turbine generators and offshore platforms must be carried out as approved.

Notifications and inspections

13.—(1) The undertaker must ensure that—

(a) prior to the carrying out of any licensed activities under this licence, the undertaker must inform the MMO of—

(i) the organisation and primary point of contact undertaking the licensed activities;

(ii) the works being undertaken pursuant to this licence comprising those works necessary up to the point of connection with the transmission assets including without prejudice of the generality of paragraph (2) above—

(aa) up to four offshore collector platform(s);

(bb) up to one offshore converter platform(s);

(cc) up to 200 offshore wind turbine generators;

(dd) up to two offshore accommodation or helicopter platforms;

(ee) up to five meteorological station(s); and

(ff) a network of cables for the transmission of electricity and electronic communications.

(iii) the maximum total area and volume for any cable protection HVAC inter-array cables and HVAC inter platform cables to be constructed with the array area pursuant to this licence; and

(iv) the maximum total area and volume for any cable protection to be constructed within the array area pursuant to this licence.

(b) all works notified under this paragraph when combined with any works notified in condition (13) of Marine Licence 2, condition (9) of Marine Licence 3 and condition (9) of Marine Licence 4 must not exceed the maximum parameters set out in Schedule 1 of the DCO.

(c) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 19; and

(ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 19;

(d) within 28 days of receipt of a copy of this licence those organisations and primary points of contact referred to at paragraph (a) above must provide a completed confirmation form to the MMO confirming that they have read and must comply with the terms of the conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 19 are permitted to carry out the licensed activities;

(3) Copies of this licence must also be available for inspection at the following locations:

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit for the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made.

(4) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all reasonable times at the locations set out in paragraph 3(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Marine Licensing Team and the MMO Coastal Office in writing at least five working days prior to the commencement of the licensed activities or any phase of them.

(7) At least seven days prior to the commencement of the licensed activities or any phase of them the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant phase.

(8) The undertaker must ensure that a notice to mariners is issued at least ten working days prior to the commencement of the licensed activities or any phase of them advising of the start date of Work No. 1A (wind turbine generation station, offshore platforms or other offshore construction activities) and the expected vessel routes from the local construction ports to the relevant locations.

(9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within five days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the Maritime and Coastguard Agency in accordance with the construction programme approved under condition 16(1)(b). Copies of all notices must be provided to the MMO.

(10) The undertaker must notify—

(a) the Hydrographic Office two weeks prior to the commencement and two weeks following completion of the authorised scheme in order that all necessary amendments to nautical charts are made; and

(b) the MMO, MCA and Trinity House once the authorised scheme is completed and any required lighting or marking has been established.

Chemicals, drilling and debris

14.—(1) All chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile or other foundation structure void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended) and managed in accordance with the "chemical risk assessment (CRA)" and "marine pollution contingency plan".

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive or the Environment Agency Pollution Prevention Guidelines. Any accidental spillages must be reported to the MMO marine pollution response team within the timeframe specified in the Marine Pollution Contingency Plan.

(3) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment and that concrete and cement mixing and washing areas are contained to prevent run off entering the water through the freeing ports. The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(4) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.

(5) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(6) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings must be obtained before the drilling commences, which may also require a marine licence.

(7) The undertaker must ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(8) The management of chemicals, drilling and control of debris detailed in 14(2)-(7) are to be managed in accordance with the "chemical risk assessment (CRA)" and "marine pollution contingency plan".

(9) At least ten days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

(a) loading facilities;

(b) vessels;

(c) equipment;

(d) shipment routes;

(e) transport;

(f) working schedules; and

(g) all components and materials to be used in the construction of the authorised scheme.

(10) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction.

(11) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it must require the undertaker to carry out a side scan sonar survey to plot all obstructions across a reasonable area of search agreed with the MMO where construction works and related activities have been carried out. Local commercial fishing groups must be invited to send a representative to be present during the survey. Any obstructions that the MMO believes to be associated with the authorised scheme must be removed at the undertaker's expense.

(12) As an alternative to the completion of an audit sheet, with written approval from the MMO, the Undertaker may introduce a Dropped Object Procedure. If a Dropped Object Procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within six hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar), and the MMO may require obstructions to be removed from the seabed at the undertaker's expense.

(13) The Undertaker is to agree with the MMO, prior to the commencement of works whether the Dropped Object Procedure or Audit Sheet is used.

Force majeure

15. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with condition 17(2) because the safety of human life and/or of the vessel is threatened—

(a) within 48 hours full details of the circumstances of the deposit must be notified to the MMO; and

(b) upon reasonable request by the MMO the unauthorised deposits must be removed at the expense of the undertaker.

Pre-construction plans and documentation

16.—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO—

(a) an "Array Location and Layout Plan" to be agreed in writing with the MMO following consultation with Trinity House and the MCA—

(i) the number, specification(s), dimensions, foundation type(s) and depth of all wind turbine generators, substations, platforms and meteorological masts;

(ii) the proposed location, including grid co-ordinates of the centre point of the proposed location for all wind turbine generators, substations, platforms, and meteorological masts;

(iii) the proposed layout of HVAC cables to ensure conformity with the description of Work No. 1A and compliance with conditions 3-11 above; and

(iv) the location and specification of vessel mooring(s) and other permanent ancillary works as agreed with the MMO,

to ensure conformity with the description of Work No. 1A and compliance with conditions 3-11 above;

(b) a detailed "construction and monitoring programme" to include details of—

(i) the proposed construction start date;

(ii) proposed timings for mobilisation of plant, delivery of materials and installation works; and

(iii) proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting in consultation with the relevant statutory nature conservation body. The pre-construction survey programme and all pre-construction survey methodologies are to be submitted to the MMO for written approval at least four months prior to the commencement of any survey works detailed within.

(c) a "construction method statement" in accordance with the construction methods assessed in the Environmental Statement and including details of—

(i) drilling methods and arrangements for disposal of drill arisings, in accordance with the disposal scenario statement;

(ii) platform location and installation, including scour protection and foundations which must be those that are able to be completely and safely removed, or reduced to a level below the seabed, at the time of decommissioning;

(iii) cable installation;

(iv) impact piling soft start procedures;

(v) the source of rock material used in construction and method to minimise contaminants and fines;

(vi) contractors;

(vii) vessels;

(viii) associated works;

(ix) foundation scour protection requirements in an intelligent scour management plan; and

(x) details of notification of the closure of the disposal site DG030 [DML1] / DG025 [DML2] upon completion of disposal activities

(d) a project "environmental management and monitoring plan" to include details of—

(i) a "marine pollution contingency plan (MPCP)" to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;

(ii) a "chemical risk assessment (CRA)" to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;

(iii) waste management and disposal arrangements;

(iv) the fisheries liaison officer appointed by the undertaker to be notified to the Marine Officer for the MMO's Northern Area and MMO Marine Licensing Team. Evidence of liaison should be collated so that signatures of attendance at meetings, agenda and

minutes of meetings with the fishing industry can be provided to the MMO if requested; and

(v) a "fisheries liaison plan (FLP)" in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including the fisheries liaison officer as in (iv) above) and a "co-existence plan".

(e) a "marine mammal mitigation protocol (MMMP)", the intention of which is to prevent injury to marine mammals, primarily auditory injury within the vicinity of any piling, and appropriate monitoring surveys in accordance with the In Principle Monitoring Plan to be agreed in writing with the MMO in consultation with the relevant statutory nature conservation body and The Wildlife Trusts.

(f) a "cable specification and installation plan", following consultation with the relevant statutory nature conservation body, to include—

(i) technical specification of offshore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;

(ii) a staged cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques;

(iii) an intelligent scour protection management plan providing details of the need, type, sources, quality and installation methods for scour protection and cable protection; and

(iv) details of methodology and extent of post lay survey, to confirm burial depths.

(g) a "written scheme of archaeological investigation (WSI)" in relation to the offshore areas within the Order limits in accordance with the outline offshore archaeological written scheme of investigation, industry good practice and in consultation with English Heritage to include—

(i) details of responsibilities of the undertaker, archaeological consultant and contractor inclusive of an agreed programme for the publication of results;

(ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;

(iii) within three months of any survey being completed a timetable to be submitted to the MMO setting out the timeframe for the analysis and reporting of survey data;

(iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;

(v) monitoring during and post construction, including a conservation programme for finds;

(vi) archiving of archaeological material including ensuring that a copy of any agreed archaeological report is deposited with the English Heritage Archive by submitting an English Heritage OASIS form with a digital copy of the report; and

(vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme.

(h) Aids to Navigational Management Plan to be agreed in writing with the MMO following consultation with Trinity House and the MCA specifying—

(i) the aids to navigation to be established from the commencement of the authorised project to the completion of decommissioning;

(ii) the monitoring and reporting of the availability of aids to navigation; and

(iii) notifications and procedures for ensuring navigational safety following failures to aids to navigation.

17.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 16 must be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 16.

Offshore safety management

18.—(1) Offshore works must not commence until the MMO, in consultation with the MCA, has given written approval for an "Emergency Response and Co-operation Plan (ERCoP)" which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues." The ERCoP must include the identification of a point of contact for emergency response.

(2) The ERCoP is to be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA but nothing in this sub paragraph shall have the effect of removing any requirement to secure an ERoCP.

(3) No authorised development seaward of MHWS must commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.

Reporting of engaged agents, contractors and vessels

19.—(1) The undertaker must provide the name and function of any agent or contractor appointed to engage in the licensed activities to the MMO at least two weeks prior to agents, contractors and vessels carrying out licensed activities.

(2) Each week during the construction of the authorised scheme a completed Hydrographic Note H102 is to be provided to the MMO listing the vessels currently and to be used in relation to the licensed activities.

(3) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Equipment and operation of vessels engaged in licensed activities

20.—(1) All vessels employed to perform the licensed activities must be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and (save in the case of remotely operated vehicles or vessels) must comply with paragraphs (2) to (5) below.

(2) All motor powered vessels must be fitted with:

(a) electronic positioning aid to provide navigational data;

(b) radar;

(c) echo sounder; and

(d) multi-channel VHF.

(3) All vessels' names or identification must be clearly marked on the hull or superstructure.

(4) All communication on VHF working frequencies must be in English; and

(5) No vessel must engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

Pre-construction monitoring

21.—(1) The undertaker must, in discharging condition 16(1)(b) and the requirement to prepare a "detailed construction and monitoring programme", include details for written approval by the MMO of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report. The survey proposals must be in accordance with the principles set out in the "In Principle Monitoring Plan" and must specify each survey's objectives and explain how it shall assist in either informing a useful and valid comparison with the post-construction position and/or shall enable the validation or otherwise of key predictions in the Environmental Statement. The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, where appropriate and necessary it is expected that the pre-construction surveys are to comprise—

(a) an appropriate survey to determine the location and reasonable extent of any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats) in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;

(b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order IA standard and side-scan surveys of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer area around the site of each works. This should include the identification of sites of historic or archaeological interest (A1 and A3 receptors) and any unidentified anomalies larger than 5m in diameter (A2 receptors), which may require the refinement, removal or introduction of archaeological exclusion zones and to confirm project specific micrositing requirements (for A2 receptors); and

(c) appropriate surveys of existing ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, which is required to validate predictions in the Environmental Statement concerning key ornithological interests of relevance to the authorised scheme.

(3) The undertaker must carry out and complete the surveys to be undertaken under paragraph (1) in a timescale which must be agreed with the MMO.

Construction monitoring

22.—(1) The undertaker must, in discharging condition 16(1)(b), submit details for approval by the MMO of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme.

(2) The "construction monitoring programme" must be submitted at least four months prior to the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The survey proposals must be in accordance with the principles set out in the "In Principle Monitoring Plan" and must specify each survey's objectives. The construction surveys must comprise—

(a) where driven or part-driven pile foundations (for each specific foundation type) are proposed to be used, measurements of noise generated by the installation of one pile from each of the first four structures with piled foundations, following which the MMO will determine whether further noise monitoring is required. The results of the initial noise measurements must be provided to the MMO within six weeks of the installation of the first relevant foundation piece. The assessment of this report by the MMO must determine whether any further noise monitoring is required;

(b) vessel traffic monitoring by Automatic Identification System, including the provision of reports on the results of that monitoring periodically as requested by the MMO; and

(c) appropriate surveys of ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, dependent upon the outcomes of the pre-construction surveys, as agreed with the MMO in consultation with the relevant statutory nature conservation body.

Post construction surveys

23.—(1) The undertaker must, in discharging condition 16(1)(b), submit details for written approval by the MMO of the five post-construction surveys proposed in paragraph (2), including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and specify each survey's objectives and explain how it assists in either informing a useful and valid comparison with the pre-construction position and/or enables the validation or otherwise of key predictions in the Environmental Statement.

(2) Subject to receipt of specific proposals, it is expected that the post-construction surveys are to comprise—

(a) appropriate surveys of ornithological activity inside the area(s) within the Order limits in which construction works were carried out, and any wider area(s) where appropriate, which is required to validate predictions in the Environmental Statement concerning key ornithological interests of relevance to the authorised scheme;

(b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order IA standard and side scan sonar surveys, around the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer area around the site of each works. For this purpose the undertaker shall prior to the first such survey submit a desk based assessment (which takes account all factors which influence scour) to identify the sample of infrastructure locations that are considered appropriate with greatest potential for scour. The survey is to be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour;

(c) dependent on the outcome of the surveys undertaken in condition 21(2)(a) above, appropriate surveys to determine the effects of construction activity on any benthic habitats of conservation ecological and/or economic importance including habitats of conservation ecological and or economic importance (including Annex 1 Habitats) in whole or in part inside the area(s) within the Order limits to validate predictions made in the Environmental Statement and to identify the presence of any non-native species and wider community/type structure;

(d) vessel traffic monitoring by Automatic Identification system totalling a maximum of twenty eight days taking account of seasonal variations in traffic patterns over one year, following the commencement of commercial operation. A report is to be submitted to the MMO and the MCA following the end of the monitoring; and

(e) appropriate surveys to determine the change in size and form of the drill disposal mounds over the lifetime of the authorised scheme.

(3) The undertaker must carry out the surveys under paragraph (1) and provide the reports in the agreed format in accordance with the timetable, as agreed in writing with the MMO following consultation with the relevant statutory nature conservation body.

24. A post construction maintenance plan must be submitted for written approval by the MMO at least four months prior to commissioning of the licensed activities, based upon the maintenance assessed with the Environmental Statement in the outline post construction maintenance plan. An update to the post construction maintenance plan must be submitted for approval every three years, or sooner in the event of any proposed major revision to planned maintenance activities, or the adoption of any new technologies or techniques applicable to programmed maintenance.

Aids to navigation

25. The undertaker must during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised development seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as directed by Trinity House.

26. The undertaker must keep Trinity House, the MCA and the MMO informed of progress of the authorised scheme seaward of MWHS including—

(a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;

(b) notice within 24 hours of any aids to navigational being established by the undertaker; and

(c) notice within five working days of completion of construction of the licensed marine activity.

27. The undertaker must submit reports quarterly to Trinity House detailing the working condition of aids to navigation. Reports may be submitted more frequently as specified by the Trinity House.

28. The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation as soon as possible and no later than 24 hours following the detection of any such failure.

29. . Following notification of a failure of aids to navigation, as soon as practical the undertaker must notify Trinity House and the MMO of timescales and plans for remedying such failures.

30. The undertaker must paint all structures as part of the authorised development seaward of MHWS yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House.

31. In case of damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the identification of damage, destruction or decay, notify Trinity House and the MMO.

32. The undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

PART 2A

Licensed Marine Activities – Marine Licence 2: Project B Offshore (Generation – Work Nos. 1B and 2T)

Interpretation

1.—(1) In this licence—

"the 2004 Act" means the Energy Act 2004;

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"Annex 1 Habitat" means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

"authorised deposits" means the substances and articles specified in paragraph 2(3);

"authorised scheme" means Work No. 1B and 2T described in paragraph 2 of this licence or any part or phase of those works;

"Bizco 3" means Doggerbank Project 3 Bizco Limited (Company number 07791964) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

"cable crossings" means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

"cable protection" means the measures to protect cables from physical damage and exposure due to loss of seabed sediment, including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

"cable specification and installation plan" means the document that includes the technical specification of offshore cables, a stage cable laying plan and burial risk assessment, a scope protection management and cable protection plan (if required), and details of post lay survey;

"chemical risk assessment (CRA)" means a document that includes information regarding how chemicals are used, stored and transported and submitted to the MMO for approval prior to construction;

"co-existence plan" means the plan which forms part of the fisheries liaison plan and details how the project will be constructed and operated taking account of the fisheries industry;

"combined platform" means a single offshore platform combining two or more of the following—

(a) an offshore collector platform;

(b) an offshore converter platform;

(c) an offshore accommodation or helicopter platform;

"commence" means the first carrying out of any part of the licensed activities except for the pre-construction surveys and "monitoring and commencing" must be construed accordingly;

"commercial operation" means in relation to the Project B Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

"condition" means a condition in Part 2B of this licence;

"construction and monitoring programme" means the programme which provides details on the construction start date, timings for mobilisation and proposed pre-construction survey(s);

"construction method statement (CMS)" means the document or documents that provide details of the final construction methods to be used;

"disposal scenario statement" means the document which sets out what would happen to drill arisings/spoil under different construction scenarios, including monitoring or relocation of spoil;

"Emergency Response and Co-operation Plan (ERCoP)" means the document which provides details of the emergency response procedures;

"environmental management and monitoring plan (EMMP)" means the document that details minimum environmental management requirements expected of all contractors and subcontractors, with regards to marine pollution contingency, waste management and disposal, chemical risk assessment and relevant fisheries liaison matters;

"fisheries liaison officer (FLO)" means a person appointed by the undertaker charged with communication and liaison with the fishing industry as appropriate through the lifetime of the project;

"fisheries liaison plan (FLP)" means the plan which details how each undertaker of the projects will consult with fisheries stakeholders;

"draft fisheries liaison plan" means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“gravity base foundation” means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbines and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

“HAT” means highest astronomical tide;

“highest astronomical tide” means the highest level which can be predicted to occur under average meteorological conditions;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“intelligent scour management plan” means the plan produced following pre-construction surveys identifying where scour protection is most likely to be required;

“the Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed activities” means the activities specified in Part 2A of this licence;

“maintain” includes inspect, repair, adjust and alter and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) of the Order and any component part of any wind turbine generator, offshore platform, meteorological station, electricity or communication cable described in Part 1 of Schedule 1 (authorised development) of the Order (but not including the removal or replacement of foundations) to the extent outlined within the post construction maintenance plan; and “maintenance” must be construed accordingly;

“marine mammal mitigation protocol (MMMP)” means the plan defines mitigation to minimise potential impacts on marine mammals, and describes any associated monitoring (if required);

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor to its function;

“marine pollution contingency plan (MPCP)”, a component of the Environmental Management and Monitoring Plan (EMMP) means the plan that addresses risks, methods and procedures to deal with any potential marine pollution;

“MCA” means the Maritime and Coastguard Agency or any successor to its function;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“meteorological mast” or “meteorological station” means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“monopole foundation” means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers or abrupt steps. Sub types for wind turbine generators and meteorological stations include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

"multileg foundation" means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

"notice to mariners" includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen's harbourmasters, government departments and harbour and pilotage authorities;

"offshore accommodation or helicopter platform" means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, small and large scale electrical power systems, J-tubes, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"offshore collector platform" means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"offshore converter platform" means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable High Voltage Direct Current transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"the Offshore Order Limits and Grid Co-ordinates Plan" means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

"offshore platform" means any of the following—

(a) an offshore accommodation or helicopter platform;

(b) an offshore collector platform;

(c) an offshore converter platform; or

(d) a combined platform;

"the Order" means the Dogger Bank Teesside A and B Offshore Wind Farm Order 201X;

"the Order limits" means the limits shown on the Offshore Order Limits and Grid Co-ordinates Plan and the Onshore Order Limits and Grid Co-ordinates Plan;

"outline post construction maintenance plan" means the document certified as the outline post construction maintenance plan by the Secretary of State for the purposes of this Order;

"outline offshore archaeological written scheme of investigation" means the document certified as the outline offshore archaeological written scheme of investigation by the Secretary of State for the purposes of this Order;

"restricted work area" means the restricted work area shown on the offshore work plan;

"scour protection" means protection against foundation scour. These measures include the use of bagged solutions filled with grout or other material, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

"scour protection management and cable protection plan" means the plan which details the foundation and cable protection requirements including installation methods;

"undertaker" means Bizco 3, or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"wind turbine generator" means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation; and

"written scheme of archaeological investigation (WSI)" means the written scheme which details the procedures for dealing with archaeological findings.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are to be taken to be Greenwich Mean Time (GMT);

(b) all coordinates are to be taken to be latitude and longitude decimal degrees to six decimal places. The datum system used is World Geodetic System 1984 datum (WGS84).

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence is—

(a) Marine Management Organisation
Marine Licensing Team
Lancaster House
Hampshire Court
Newcastle Upon Tyne
Tyne and Wear
NE4 7YH
Email: marine.consents@marinemanagement.org.uk
Tel: 0300 123 1032

(b) Trinity House
Tower Hill
London

EC3N 4DH
Tel: 020 7481 6900;

(c) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

(d) Marine and Coastguard Agency
Navigation Safety Branch
Bay 2/04
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9191;

(e) Natural England
Foundry House
3 Millsands
Riverside Exchange
Sheffield
S3 8NH
Tel: 0300 060 4911;

(f) English Heritage
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 057;

(5) For information only, the details of the local MMO office to the authorised scheme is—
Marine Management Organisation – Northern Marine Area
MMO Coastal Office
Neville House
Central Riverside
Bell Street
North Shields
Tyne and Wear
NE30 1LJ
Email: northshields@marinemanagement.org.uk

Tel: 0191 257 4520

Details of licensed marine activities

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions—

(a) the deposit at sea of the substances and articles specified in paragraph (3) below;

(b) the construction of works specified in paragraph (2) in or over the sea and/or on or under the sea bed including the removal, reconstruction or alteration of the position of subsea cables and pipelines; and

(c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) Subject to sub-paragraph (6) such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 1B—

(a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundation, situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (e) below;

Coordinates for the array area

Point	*Latitude (Decimal Degrees)*	*Longitude (Decimal Degrees)*
25	55.12443	2.14572
26	55.13002	2.21780
51	54.97070	2.50189
52	54.96096	2.48529
56	54.83864	2.27783
57	54.83862	2.26336
24	55.01111	1.95454

(b) a maximum of seven offshore platforms comprising the following:

(i) up to four offshore collector platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundation;

(ii) an offshore converter platform situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iv) or any of the platforms comprised in Work No.1B(b)(i) to Work No.1B(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;

(c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1B(a) either fixed to the seabed by monopole, multileg or gravity base type foundations or utilising a floating support structure anchored to the seabed; or

(d) a network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—

(i) any of the wind turbine generators comprising Work No. 1B(a);

(ii) any of the wind turbine generators comprising Work No. 1B(a) and Work No. 1B (c);

(iii) any of the works comprising Work No. 1B(b) and Work No.1B(c);

(iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

(e) up to ten vessel mooring(s) situated within the array area specified in the table Work No. 1B(a) consisting of a single floating buoy secured by chain and anchor anchored to the seabed;

Work No. 2T – a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads, alongside the cable corridors.

Ancillary works in connection to the above-mentioned works comprising—

(a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;

(b) temporary or permanent buoys, beacons, fenders and other navigational warning on ship impact protection works;

(c) temporary works for the protection of land on structures affected by the authorised scheme;

(d) cable protection, scour protection or dredging; and

(e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping.

(3) The substances or articles authorised for deposit at sea are—

(a) iron/steel/aluminium;

(b) stone and rock;

(c) concrete/grout;

(d) sand and gravel;

(e) plastic/synthetic;

(f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and

(g) marine coatings, other chemicals and timber.

(4) Subject to the licence conditions, this licence authorises the disposal of up to 968,789m3 of material of natural origin within Work No. 1B produced during construction drilling and seabed preparation for foundation works and cable sandwave preparation works (Disposal Site Reference Number DG025).

(5) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(6) The licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity may commence until a written decommissioning programme in accordance with an approved programme under section 105(2) of the 2004 Act, has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out any such works, the undertaker must notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

PART 2B

Conditions

Detailed offshore design parameters

3.—(1) No wind turbine generator forming part of the authorised development may—

(a) exceed a height of 315 metres when measured from HAT to the tip of the vertical blade;

(b) exceed a rotor diameter of 215 metres;

(c) be less than a multiple of six times the rotor diameter from the nearest wind turbine generator in any direction being not less than 750 metres measured between turbines; and

(d) have a distance of less than 26 metres between the lowest point of the rotating blade of the wind turbine generator and the level of the sea at HAT.

(2) The total rotor swept area forming part of the authorised development within Work 1B must not exceed 4.35km2.

(3) References to the location of a wind turbine generator forming part of the authorised development are references to the centroid point at the base of the turbine.

4.—(1) No meteorological station lattice tower forming part of the authorised development may exceed a height of 315 metres above HAT.

(2) Meteorological mast foundation structures forming part of the authorised development must be of one or more of the following foundation options: monopole, multileg, gravity base or floating structure secured by chain and anchor.

(3) No meteorological mast foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than four driven piles;

(b) in the case of single pile structures, have a pile diameter of greater than 10 metres and employ a hammer energy during installation of greater than 2,300kJ; and

(c) in the case of two or more pile structures, have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 1,900kJ.

(4) No Meteorological mast foundation may exceed—

(a) A seabed footprint area (excluding scour protection) more than 1,735m2;

(b) a seabed footprint area of (including subsea/scour protection) more than 4,657m2; and

(c) A width of main supporting structure more than 51.5m.

5.—(1) The total number of offshore platforms within Work 1B forming part of the authorised development must not exceed seven comprising of—

(a) up to four offshore collector platform(s);

(b) an offshore converter platform;

(c) up to two offshore accommodation or helicopter platform(s); and

(d) or any of the platforms comprised in (2)(a) to (c) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundation.

(2) The dimensions of any offshore collector platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 75 metres in length;

(b) 75 metres in width; and

(c) 85 metres in height above HAT.

(3) The dimensions of any offshore converter platform forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(4) The dimensions of any offshore accommodation or helicopter platform(s) forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(5) The dimensions of any combined platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(6) Offshore platform foundation structures forming part of the authorised development must be one or more of the following foundation options: gravity base or multileg.

(7) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than twenty four driven piles; and

(b) have a pile diameter of greater than 2.75 metres and employ a hammer energy during installation of greater than 1,900kJ.

(8) Within Work No. 1B the maximum seabed footprint area per offshore foundation (excluding scour protection) forming part of the authorised development must not exceed—

(a) offshore collector platform must not exceed 5,625m2;

(b) offshore converter platform must not exceed 12,500m2; and

(c) offshore accommodation or helicopter platform must not exceed 12,500m2.

(9) No offshore collector platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 9,025m2.

(10) No offshore converter platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(11) No offshore accommodation or helicopter platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(12) The number of vessels actively carrying out impact piling as part of the installation of driven pile foundations for the authorised scheme must at no time exceed two within Work No.1B.

6.—(1) Wind turbine generator foundation structures forming part of the authorised development must be of one or more of the following foundation options: monopole, multileg or gravity base.

(2) No wind turbine generator foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than six driven piles;

(b) in the case of single pile structures have a pile diameter of greater than 12 metres and employ a hammer energy during installation of greater than 3,000kJ; and

(c) in the case of two or more pile structures have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 2,300kJ.

(3) No wind turbine generator foundation forming part of the authorised development may have—

(a) a width of main supporting structure more than 61m;

(b) a seabed footprint area (excluding scour protection) more than 2,376 m2; and

(c) a seabed footprint area of (including subsea/scour protection) more than 5,675m2.

(4) The foundations for wind turbine generators must be in accordance with the wave reflection coefficient values as set out at Table 3.6 within Chapter 5 and Appendix 5.B Dogger Bank Teesside A & Foundation Characterisation Study of the Environmental Statement.

7. Within Work No. 1B wind turbine generator foundations forming part of the authorised development must not exceed—

(a) 1,005,300m2 of total seabed footprint;

(b) 1,084,850m3 volume of subsea/scour protection material; and

(c) 755,400m2 total seabed footprint area of subsea/scour protection.

8. The total footprint of foundation structures (excluding mooring buoys) within Work 1B (including scour protection and drill arising deposits) forming part of the authorised development must not exceed 1,116,850m2.

9. Within Work No. 1B the High Voltage Alternating Current cables forming part of the authorised development must not exceed—

(a) the length of 1,270km;

(b) the cable protection (excluding cable crossings) area of 890,000m2; and

(c) the cable protection (excluding cable crossings) volume of 572,000m3.

10. Within Work No. 1B the High Voltage Alternating Current cable crossings forming part of the authorised development must not exceed—

(a) The number of 24;

(b) The cable crossing material volume of 132,700 m3; and

(c) The total footprint of 147,100m2.

11. Within Work No. 1B and 2B the High Voltage Direct Current cable crossings must not exceed—

(a) the number of 16;

(b) the cable crossing material volume of 88,450m3; and

(c) the total footprint of 98,100m2.

Layout Rules

12.—(1) The positions of wind turbine generators and offshore platform(s) must be arrayed in accordance with parameters applicable to Work No. 1B specified in condition 3 and the principles within section 5.2 of Chapter 5 of the Environmental Statement.

(2) No construction of any wind turbine generator or offshore platform forming part of the authorised scheme may commence until the MMO, has agreed in writing following consultation with Trinity House and the MCA, the “Array Location and Layout Plan”.

(3) The construction of the wind turbine generators and offshore platforms must be carried out as approved.

Notifications and inspections

13.—(1) The undertaker must ensure that:

(a) prior to the carrying out of any licensed activities under this licence, the undertaker must inform the MMO of—

(i) the organisation and primary point of contact undertaking the licensed activities;

(ii) the works being undertaken pursuant to this licence comprising those works necessary up to the point of connection with the transmission assets including without prejudice of the generality of paragraph (2) above—

(aa) up to four offshore collector platform(s);

(bb) up to one offshore converter platform(s);

(cc) up to 200 offshore wind turbine generators;

(dd) up to two offshore accommodation or helicopter platforms;

(ee) up to five meteorological station(s); and

(ff) a network of cables for the transmission of electricity and electronic communications.

(iii) the maximum total area and volume for any cable protection HVAC inter-array cables and HVAC inter platform cables to be constructed with the array area pursuant to this licence; and

(iv) the maximum total area and volume for any cable protection to be constructed within the array area pursuant to this licence.

(b) All works notified under this paragraph when combined with any works notified in condition (13) of Marine Licence 1, condition (9) of Marine Licence 3 and condition (9) of Marine Licence 4 must not exceed the maximum parameters set out in Schedule 1 of the DCO.

(c) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 19; and

(ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 19;

(d) within 28 days of receipt of a copy of this licence those organisations and primary points of contact referred to at paragraph (a) above must provide a completed confirmation form to the MMO confirming that they have read and must comply with the terms of the conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 19 are permitted to carry out the licensed activities;

(3) Copies of this licence must also be available for inspection at the following locations:

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit for the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made.

(4) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all reasonable times at the locations set out in paragraph 3(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Marine Licensing Team and the MMO Coastal Office in writing at least five working days prior to the commencement of the licensed activities or any phase of them.

(7) At least seven days prior to the commencement of the licensed activities or any phase of them the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant phase.

(8) The undertaker must ensure that a notice to mariners is issued at least ten working days prior to the commencement of the licensed activities or any phase of them advising of the start date of Work No. 1B (wind turbine generation station, offshore platforms or other offshore

construction activities) and the expected vessel routes from the local construction ports to the relevant locations.

(9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within five days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the Maritime and Coastguard Agency in accordance with the construction programme approved under condition 16(1)(b). Copies of all notices must be provided to the MMO.

(10) The undertaker must notify—

(a) the Hydrographic Office two weeks prior to the commencement and two weeks following completion of the authorised scheme in order that all necessary amendments to nautical charts are made; and

(b) the MMO, MCA and Trinity House once the authorised scheme is completed and any required lighting or marking has been established.

Chemicals, drilling and debris

14.—(1) All chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile or other foundation structure void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended) and managed in accordance with the "chemical risk assessment (CRA)" and "marine pollution contingency plan".

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive or the Environment Agency Pollution Prevention Guidelines. Any accidental spillages must be reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.

(3) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment and that concrete and cement mixing and washing areas are contained to prevent run off entering the water through the freeing ports. The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(4) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO marine pollution response team within the timeframe specified in the Marine Pollution Contingency Plan.

(5) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(6) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings must be obtained before the drilling commences, which may also require a marine licence.

(7) The undertaker must ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(8) The management of chemicals, drilling and control of debris detailed in 14(2)-(7) are to be managed in accordance with the "chemical risk assessment (CRA)" and "marine pollution contingency plan".

(9) At least ten days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

(a) loading facilities;

(b) vessels;

(c) equipment;

(d) shipment routes;

(e) transport;

(f) working schedules; and

(g) all components and materials to be used in the construction of the authorised scheme.

(10) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction.

(11) As an alternative to the completion of an audit sheet, with written approval from the MMO, the Undertaker may introduce a Dropped Object Procedure. If a Dropped Object Procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within six hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar), and the MMO may require obstructions to be removed from the seabed at the undertaker's expense .

(12) the Undertaker is to agree with the MMO, prior to the commencement of works whether the Dropped Object Procedure or Audit Sheet is used.

Force majeure

15. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with condition 17(2) because the safety of human life and/or of the vessel is threatened:

(a) within 48 hours full details of the circumstances of the deposit must be notified to the MMO; and

(b) upon reasonable request by the MMO the unauthorised deposits must be removed at the expense of the undertaker.

Pre-construction plans and documentation

16.—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO—

(a) an "Array Location and Layout Plan" to be agreed in writing with the MMO following consultation with Trinity House and the MCA—

(i) the number, specification(s), dimensions, foundation type(s) and depth of all wind turbine generators, substations, platforms and meteorological masts;

(ii) the proposed location, including grid co-ordinates of the centre point of the proposed location for all wind turbine generators, substations, platforms, and meteorological masts;

(iii) the proposed layout of HVAC cables to ensure conformity with the description of Work No. 1B and compliance with conditions 3-11 above; and

(iv) location and specification of vessel mooring(s) and other permanent ancillary works as agreed with the MMO,

to ensure conformity with the description of Work No. 1B and compliance with conditions 3-11 above;

(b) a detailed construction and monitoring programme to include details of—

(i) the proposed construction start date;

(ii) proposed timings for mobilisation of plant, delivery of materials and installation works; and

(iii) proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting in consultation with the relevant statutory nature conservation body. The pre-construction survey programme and all pre-construction survey methodologies are to be submitted to the MMO for written approval at least four months prior to the commencement of any survey works detailed within;

(c) a "construction method statement" in accordance with the construction methods assessed in the Environmental Statement and including details of—

(i) drilling methods and arrangements for disposal of drill arisings, in accordance with the disposal scenario statement;

(ii) platform location and installation, including scour protection and foundations which must be those that are able to be completely and safely removed, or reduced to a level below the seabed, at the time of decommissioning;

(iii) cable installation between MHWS and MLWS;

(iv) impact piling soft start procedures;

(v) the source of rock material used in construction and method to minimise contaminants and fines;

(vi) contractors;

(vii) vessels;

(viii) associated works;

(ix) foundation scour protection requirements in an intelligent scour management plan; and

(x) details of notification of the closure of the disposal site DG030 [DML1] / DG025 [DML2] upon completion of disposal activities

(d) a project "environmental management and monitoring plan" to include details of—

(i) a "marine pollution contingency plan (MPCP)" to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;

(ii) a "chemical risk assessment (CRA)" to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;

(iii) waste management and disposal arrangements;

(iv) the fisheries liaison officer appointed by the undertaker to be notified to the Marine Officer for the MMO's Northern Area and MMO Marine Licensing Team. Evidence of liaison should be collated so that signatures of attendance at meetings, agenda and minutes of meetings with the fishing industry can be provided to the MMO if requested; and

(v) a "fisheries liaison plan (FLP)" in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including the fisheries liaison officer as in (iv) above) and a co-existence plan.

(e) a marine mammal mitigation protocol (MMMP), the intention of which is to prevent injury to marine mammals, primarily auditory injury within the vicinity of any piling, and appropriate monitoring surveys in accordance with the In Principle Monitoring Plan to be agreed in writing with the MMO in consultation with the relevant statutory nature conservation body and The Wildlife Trusts.

(f) a "cable specification and installation plan", following consultation with the relevant statutory nature conservation body, to include—

(i) technical specification of offshore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;

(ii) a staged cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques;

(iii) an intelligent scour protection management and plan providing details of the need, type, sources, quality and installation methods for scour protection and cable protection; and

(iv) details of methodology and extent of post lay survey, to confirm burial depths.

(g) an "offshore archaeological written scheme of investigation (WSI)" in relation to the offshore areas within the Order limits in accordance with the outline offshore archaeological written scheme of investigation, industry good practice and in consultation with English Heritage to include—

(i) details of responsibilities of the undertaker, archaeological consultant and contractor inclusive of an agreed programme for the publication of results;

(ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;

(iii) within three months of any survey being completed a timetable to be submitted to the MMO setting out the timeframe for the analysis and reporting of survey data;

(iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;

(v) monitoring during and post construction, including a conservation programme for finds;

(vi) archiving of archaeological material including ensuring that a copy of any agreed archaeological report is deposited with the English Heritage Archive by submitting an English Heritage OASIS form with a digital copy of the report; and

(vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme.

(h) Aids to Navigational Management Plan to be agreed in writing with the MMO following consultation with Trinity House and the MCA specifying—

(i) the aids to navigation to be established from the commencement of the authorised project to the completion of decommissioning;

(ii) the monitoring and reporting of the availability of aids to navigation; and

(iii) notifications and procedures for ensuring navigational safety following failures to aids to navigation.

17.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 16 must be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 16.

Offshore safety management

18.—(1) Offshore works are not to commence until the MMO, in consultation with the MCA, has given written approval for an "Emergency Response and Co-operation Plan (ERCoP)" which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues." The ERCoP must include the identification of a point of contact for emergency response.

(2) The ERCoP is to be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA but nothing in this sub paragraph shall have the effect of removing any requirement to secure an ERCoP.

(3) No authorised development seaward of MHWS is to commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.

Reporting of engaged agents, contractors and vessels

19.—(1) The undertaker must provide the name and function of any agent or contractor appointed to engage in the licensed activities to the MMO at least two weeks prior to agents, contractors and vessels carrying out licensed activities.

(2) Each week during the construction of the authorised scheme a completed Hydrographic Note H102 is to be provided to the MMO listing the vessels currently and to be used in relation to the licensed activities.

(3) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Equipment and operation of vessels engaged in licensed activities

20.—(1) All vessels employed to perform the licensed activities must be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and (save in the case of remotely operated vehicles or vessels) must comply with paragraphs (2) to (5) below.

(2) All motor powered vessels must be fitted with:

(a) electronic positioning aid to provide navigational data;

(b) radar;

(c) echo sounder; and

(d) multi-channel VHF.

(3) All vessels' names or identification must be clearly marked on the hull or superstructure.

(4) All communication on VHF working frequencies must be in English; and

(5) No vessel must engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

Pre-construction monitoring

21.—(1) The undertaker must, in discharging condition 16(1)(b), and the requirement to prepare a "detailed construction and monitoring programme" includes details for written approval by the MMO of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives and explain how it assists in either informing a useful and valid comparison with the post-construction position and/or enables the validation or otherwise of key predictions in the Environmental Statement. The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, where appropriate and necessary it is expected that the pre-construction surveys are to comprise—

(a) an appropriate survey to determine the location and reasonable extent of any benthic habitats of conservation, ecological and/or economic importance (including Annex 1

habitats) in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;

(b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order IA standard and side-scan surveys of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer area around the site of each works. This should include the identification of sites of historic or archaeological interest (A1 and A3 receptors) and any unidentified anomalies larger than 5m in diameter (A2 receptors), which may require the refinement, removal or introduction of archaeological exclusion zones and to confirm project specific micrositing requirements (for A2 receptors); and

(c) appropriate surveys of existing ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, which is required to validate predictions in the Environmental Statement concerning key ornithological interests of relevance to the authorised scheme.

(3) The undertaker must carry out and complete the surveys to be undertaken under paragraph (1) in a timescale agreed with the MMO.

Construction monitoring

22.—(1) The undertaker must, in discharging condition 16(1)(b), submit details for approval by the MMO of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme.

(2) The "the construction monitoring programme" must be submitted at least four months prior to the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The survey proposals must be in accordance with the principles set out in the "In Principle Monitoring Plan" and must specify each survey's objectives. The construction surveys must comprise—

(a) where driven or part-driven pile foundations (for each specific foundation type) are proposed to be used, measurements of noise generated by the installation of one pile from each of the first four structures with piled foundations, following which the MMO will determine whether further noise monitoring is required. The results of the initial noise measurements must be provided to the MMO within six weeks of the installation of the first relevant foundation piece. The assessment of this report by the MMO must determine whether any further noise monitoring is required;

(b) vessel traffic monitoring by Automatic Identification System, including the provision of reports on the results of that monitoring periodically as requested by the MMO; and

(c) appropriate surveys of ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, dependent upon the outcomes of the pre-construction surveys, as agreed with the MMO in consultation with the relevant statutory nature conservation body.

Post construction surveys

23.—(1) The undertaker must, in discharging condition 16(1)(b), submit details for written approval by the MMO of the five post-construction surveys proposed in paragraph (2), including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and specify each survey's objectives and explain how it assists in either informing a useful and valid comparison with the pre-construction position and/or enables the validation or otherwise of key predictions in the Environmental Statement.

(2) Subject to receipt of specific proposals, it is expected that the post-construction surveys are to comprise—

(a) appropriate surveys of ornithological activity inside the area(s) within the Order limits in which construction works were carried out, and any wider area(s) where appropriate, which is required to validate predictions in the Environmental Statement concerning key ornithological interests of relevance to the authorised scheme;

(b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order IA standard and side scan sonar surveys around the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer area around the site of each works. For this purpose the undertaker shall prior to the first such survey submit a desk based assessment (which takes account all factors which influence scour) to identify the sample of infrastructure locations that are considered appropriate with greatest potential for scour. The survey is to be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour;

(c) dependent on the outcome of the surveys undertaken in condition 21(2)(a) above, appropriate surveys to determine the effects of construction activity on any benthic habitats of conservation ecological and/or economic importance including habitats of conservation ecological and or economic importance (including Annex 1 Habitats) in whole or in part inside the area(s) within the Order limits to validate predictions made in the Environmental Statement and to identify the presence of any non-native species and wider community/type structure;

(d) vessel traffic monitoring by Automatic Identification system totalling a maximum of twenty eight days taking account of seasonal variations in traffic patterns over one year, following the commencement of commercial operation. A report is to be submitted to the MMO and the MCA following the end of the monitoring; and

(e) appropriate surveys to determine the change in size and form of the drill disposal mounds over the lifetime of the authorised scheme.

(3) The undertaker must carry out the surveys under paragraph (1) and provide the reports in the agreed format in accordance with the timetable, as agreed in writing with the MMO, following consultation with the relevant statutory nature conservation body.

24. A post construction maintenance plan must be submitted for written approval by the MMO at least four months prior to commissioning of the licensed activities, based upon the maintenance assessed with the Environmental Statement in the outline post construction maintenance plan. An update to the post construction maintenance plan must be submitted for approval every three years, or sooner in the event of any proposed major revision to planned maintenance activities, or the adoption of any new technologies or techniques applicable to programmed maintenance.

Aids to navigation

25. The undertaker must during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised development seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as directed by Trinity House

26. The undertaker must keep Trinity House, the MCA and the MMO informed of progress of the authorised development seaward of MWHS including;

(a) notice of commencement of construction of the authorised development within 24 hours of commencement having occurred;

(b) notice within 24 hours of any aids to navigational being established by the undertaker; and

(c) notice within 5 working days of completion of construction of the marine activities.

27. The undertaker must submit reports quarterly to Trinity House detailing the working condition of aids to navigation. Reports may be submitted more frequently as specified by the Trinity House.

28. The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation as soon as possible and no later than 24 hours following the detection of any such failure.

29. Following notification of a failure of aids to navigation, as soon as practical the undertaker must notify Trinity House and the MMO of timescales and plans for remedying such failures.

30. The undertaker must paint all structures as part of the authorised development seaward of MHWS yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House.

31. In case of damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the identification of damage, destruction or decay, notify Trinity House and the MMO.

32. The undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

PART 3A

Licensed Marine Activities – Marine Licence 3: Project A Offshore (Transmission - Work Nos. 2A, 3A and 2T)

Interpretation

1.—(1) In this licence—

"the 2004 Act" means the Energy Act 2004;

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"Annex 1 Habitat" means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

"authorised deposits" means the substances and articles specified in paragraph 2(3);

"authorised scheme" means Work Nos. 1A, 2A, 3A and 2T described in paragraph 2 of this licence or any part or phase of those works;

"Bizco 2" means Doggerbank Project 1 Bizco Limited (Company number 07791977) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

"cable crossings" means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

"cable protection" means the measures to protect cables from physical damage and exposure due to loss of seabed sediment, including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

"cable specification and installation plan" means the document that includes the technical specification of offshore cables, a stage cable laying plan and burial risk assessment, a scope protection management and cable protection plan (if required), and details of post lay survey;

"chemical risk assessment (CRA)" means a document that includes information regarding how chemicals are used, stored and transported and submitted to the MMO for approval prior to construction;

"cofferdam" means a watertight enclosure pumped dry to permit construction work below the waterline;

“co-existence plan” means the plan which forms part of the fisheries liaison plan and details how the project will be constructed and operated taking account of the fisheries industry;

“commence” means the first carrying out of any part of the licensed activities except for the pre-construction surveys and “monitoring and commencing” must be construed accordingly;

“condition” means a condition in Part 3B of this licence;

“construction and monitoring programme” means the programme which provides details on the construction start date, timings for mobilisation and proposed pre-construction survey(s);

“construction method statement (CMS)” means the document or documents that provide details of the final construction methods to be used;

“Emergency Response and Co-operation Plan (ERCoP)” means the document which provides details of the emergency response procedures;

“environmental management and monitoring plan (EMMP)” means the document that details minimum environmental management requirements expected of all contractors and subcontractors, with regards to marine pollution contingency, waste management and disposal, chemical risk assessment and relevant fisheries liaison matters;

“fisheries liaison officer (FLO)” means a person appointed by the undertaker charged with communication and liaison with the fishing industry as appropriate through the lifetime of the project;

“fisheries liaison plan (FLP)” means the plan which details how each undertaker of the projects will consult with fisheries stakeholders;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“HAT” means highest astronomical tide;

“highest astronomical tide” means the highest level which can be predicted to occur under average meteorological conditions;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“intelligent scour management plan” means the plan produced following pre-construction surveys identifying where scour protection is most likely to be required;

“the Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed activities” means the activities specified in Part 3A of this licence;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) of the Order and any component part of any offshore platform, meteorological station, electricity or communication cable described in Part 1 of Schedule 1 (authorised development) of the Order (but not including the removal or replacement of foundations) to the extent outlined within the post construction maintenance plan, and “maintenance” must be construed accordingly;

“marine mammal mitigation protocol (MMMP)” means the plan defines mitigation to minimise potential impacts on marine mammals, and describes any associated monitoring (if required);

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor to its function;

"marine pollution contingency plan (MPCP)", a component of the Environmental Management and Monitoring Plan (EMMP) means the plan that addresses risks, methods and procedures to deal with any potential marine pollution;

"MCA" means the Maritime and Coastguard Agency or any successor to its function;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"monopole foundation" means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers or abrupt steps. Sub types for wind turbine generators and meteorological stations, include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

"multileg foundation" means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations must be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

"notice to mariners" includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen's harbourmasters, government departments and harbour and pilotage authorities;

"offshore collector platform" means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"offshore converter platform" means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable High Voltage Direct Current transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"the Offshore Order Limits Plan and Grid Co-ordinates Plan" means the plans certified as the Offshore Order Limits and Grid Co-ordinates Plan by the Secretary of State for the purposes of this Order;

"offshore platform" means any of the following—

(a) an offshore accommodation or helicopter platform;

(b) an offshore collector platform;

(c) an offshore converter platform; or

(d) a combined platform;

"the Order" means the Dogger Bank Teesside A and B Offshore Wind Farm Order 201X;

"the Order limits" means the limits shown on the Offshore Order Limits and Grid Co-ordinates Plan and the Onshore Order Limits and Grid Co-ordinates Plan;

"outline post construction maintenance plan" means the document certified as the outline post construction maintenance plan by the Secretary of State for the purposes of this Order.

"outline offshore archaeological written scheme of investigation" means the document certified as the outline archaeological written scheme of investigation by the Secretary of State for the purposes of this Order;

"restricted work area" means the restricted work area shown on the offshore works plan;

"scour protection" means protection against foundation scour. These measures include the use of base solutions filled with grout or other material, protective aprons, mattresses, flow energy, dissipation devices and rock and gravel burial;

"scour protection management and cable protection plan" means the plan which details the foundation and cable protection requirements including installation methods;

"undertaker" means Bizco 2, or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water; and

"written scheme of archaeological investigation (WSI)" means the written scheme which details the procedures for dealing with archaeological findings.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are to be taken to be Greenwich Mean Time (GMT);

(b) all coordinates are to be taken to be latitude and longitude decimal degrees to six decimal places. The datum system used is World Geodetic System 1984 datum (WGS84).

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence is—

(a) Marine Management Organisation

Marine Licensing Team

Lancaster House

Hampshire Court

Newcastle upon Tyne

Tyne and Wear

NE4 7YH

Email: marine.consents@marinemanagement.org.uk

Tel: 0300 123 1032

(b) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

(c) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

(d) Marine and Coastguard Agency
Navigation Safety Branch
Bay 2/04
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9191;

(e) Natural England
Foundry House
3 Millsands
Riverside Exchange
Sheffield
S3 8NH
Tel: 0300 060 4911;

(f) English Heritage
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 057

(5) For information only, the details of the local MMO office to the authorised scheme is—
Marine Management Organisation – Northern Marine Area
MMO Coastal Office
Neville House
Central Riverside
Bell Street
North Shields
Tyne and Wear
NE30 1LJ
Email: northshields@marinemanagement.org.uk
Tel: 0191 257 4520

Details of licensed marine activities

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions—

(a) the deposit at sea of the substances and articles specified in paragraph (3) below;

(b) the construction of works specified in paragraph (2) but not subparagraph (2)(a) or (d)(i), (ii), (iii) in or over the sea and/or on or under the sea bed including the removal, reconstruction or alteration of the position of subsea cables and pipelines ; and

(c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) Subject to sub-paragraph (6) such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 1A—

(a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundation situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (e) below;

Coordinates for the array area

Point	*Latitude (Decimal Degrees)*	*Longitude (Decimal Degrees)*
31	55.11790	2.57524
32	55.11860	3.09890
33	55.10690	3.09409
34	55.09071	3.08744
35	55.07452	3.08080
36	55.05832	3.07416
37	55.04213	3.06752
38	55.02594	3.06090
39	55.00974	3.05427
40	54.99487	3.04820
41	54.97803	3.04132
42	54.97735	3.04104
43	54.96115	3.03444
44	54.95485	3.03187
45	54.95510	3.01393
46	54.95556	2.97851
47	54.95562	2.97450
50	54.96011	2.57690

(b) a maximum of seven offshore platforms comprising the following:

(i) up to four offshore collector platform(s) situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(ii) an offshore converter platform situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iv) or any of the platforms comprised in Work No. 1A(b)(i) to Work No.1A (b)(ii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;

(c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1A(a) either fixed to the seabed by monopole, multileg or gravity base type foundations or utilising a floating support structure anchored to the seabed;

(d) A network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—

(i) any of the wind turbine generators comprising Work No. 1A(a);

(ii) any of the wind turbine generators comprising Work No. 1A(a) and Work No. 1A(c);

(iii) any of the works comprising Work No. 1A(b) and Work No.1A(c);

(iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

(e) up to ten vessel mooring(s) situated within the array area specified in the table in Work No. 1A(a) consisting of a single floating buoy secured by chain and anchor anchored to the seabed.

Work No. 2A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid on or beneath the seabed between Work No. 1A(b) and Work No. 3A including cable crossings;

Work No. 3A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground between mean low water springs and mean high water springs and connecting Work No. 2A with Work No 4A;

Work No. 2T – a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads alongside the cable corridors.

Ancillary works in connection to the above-mentioned works comprising—

(a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;

(b) temporary or permanent buoys, beacons, fenders and other navigational warning on ship impact protection works;

(c) temporary works for the protection of land on structures affected by the authorised scheme;

(d) cable protection, scour protection or dredging; and

(e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping.

(3) The substances or articles authorised for deposit at sea are—

(a) iron/steel/aluminium;

(b) stone and rock;

(c) concrete/grout;

(d) sand and gravel;

(e) plastic/synthetic;

(f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and

(g) marine coatings, other chemicals and timber;

(4) This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity may commence until a written decommissioning programme in accordance with an approved programme under section 105(2) of the 2004 Act, has been submitted to the Secretary of State for approval. Furthermore, at least 4 months prior to carrying out any such works, the undertaker must notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

PART 3B

Conditions

Detailed offshore design parameters

3.—(1) The total number of offshore platforms to be licensed must not exceed seven comprising of—

(a) up to four offshore collector platform(s);

(b) an offshore converter platform;

(c) up to two offshore accommodation or helicopter platform(s); and

(d) or any of the platforms comprised in (1)(a) to (c) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundation.

(2) The dimensions of any offshore collector platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 75 metres in length;

(b) 75 metres in width; and

(c) 85 metres in height above HAT.

(3) The dimensions of any offshore converter platform forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(4) The dimensions of any offshore accommodation or helicopter platform(s) forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(5) The dimensions of any combined platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(6) Offshore platform foundation structures forming part of the authorised development must be one or more of the following foundation options: gravity base or multileg.

(7) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than twenty four driven piles; and

(b) have a pile diameter of greater than 2.75 metres and employ a hammer energy during installation of greater than 1,900kJ.

(8) Within Work No. 1A the maximum seabed footprint area per offshore foundation (excluding scour protection) forming part of the authorised development must not exceed—

(a) offshore collector platform must not exceed 5,625m2;

(b) offshore converter platform must not exceed 12,500m2; and

(c) offshore accommodation or helicopter platform must not exceed 12,500m2.

(9) No offshore collector platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 9,025m2

(10) No offshore converter platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(11) No offshore accommodation or helicopter platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(12) The number of vessels actively carrying out impact piling as part of the installation of driven pile foundations for the authorised scheme must at no time exceed two within Work No 1A.

4. The total footprint of offshore platform foundation structures within Work 1A (including scour protection and drill arising deposits) forming part of the authorised development must not exceed 88,300m2.

5.—(1) Within Work No. 1A, 2A and 3A the High Voltage Direct Current cables forming part of the authorised development must not exceed—

(a) The number of two;

(b) A fibre optic cable; and

(c) The total length of 573.2km.

(2) Within Work No. 1A and 2A the High Voltage Direct Current cables forming part of the authorised development must not exceed—

(a) The cable protection (excluding cable crossings) area of 2.57 km2; and

(b) The cable protection (excluding cable crossings)volume of 2,496,785 m3.

6. Within Work No. 1A the High Voltage Alternating Current cables forming part of the authorised development must not exceed—

(a) The length of 1,270km;

(b) The cable protection (excluding cable crossings) area of 660,000m2;

(c) The cable protection (excluding cable crossings) volume of 413,000m3;

7. Within Work No. 1A the High Voltage Alternating Current cable crossings forming part of the authorised development must not exceed—

(a) The number of 24;

(b) The cable crossing material volume of 132,700m3; and

(c) The total footprint of 147,100m2.

8. Within Work No. 1A and 2A the High Voltage Direct Current cable crossings must not exceed—

(a) The number of 16;

(b) The cable crossing material volume of 88,450 m3; and

(c) The total footprint of 98,100m2.

Notifications and inspections

9.—(1) The undertaker must ensure that—

(a) Prior to carrying out any of the licensed activities under this licence, the undertaker must inform the MMO of—

(i) the organisation and primary point of contact undertaking the licensed activities;

(ii) the works being undertaken pursuant to this licence comprising those works necessary up to the point of connection with the generation assets including, without prejudice, the generality of paragraph (2) above—

(aa) up to four offshore collector platform(s); and

(bb) a network of cables for the transmission of electricity and electronic communications.

(iii) cable installation;

(iv) impact piling soft start procedures;

(v) the maximum total area and volume for any cables to be constructed pursuant to this licence; and

(vi) the maximum total area and volume for any cable protection to be constructed within the area of export cables pursuant to this licence.

(b) all works notified under this paragraph when combined with any works notified in condition (13) of Marine Licence 1, condition (13) of Marine Licence 2 and condition (9) of Marine Licence 4 must not exceed the maximum parameters set out in Schedule 1 of the DCO;

(c) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it as provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 15; and

(ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 15.

(d) within 28 days of receipt of a copy of this licence those organisations and primary points of contact referred to at paragraph (a) above must provide a completed confirmation form to the MMO confirming that they have read and must comply with the terms of the conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 15 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations:

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit for the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made.

(4) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all reasonable times at the locations set out in paragraph 3(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Marine Licensing Team and the MMO Coastal Office in writing at least five working days prior to the commencement of the licensed activities or any phase of them.

(7) At least seven days prior to the commencement of the licensed activities or any phase of them the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel

routes, timings and locations relating to the construction of the authorised scheme or relevant phase.

(8) The undertaker must ensure that a notice to mariners is issued at least ten working days prior to the commencement of the licensed activities or any phase of them advising of the start date of Work Nos. 2A and 3A and the expected vessel routes from the local construction ports to the relevant locations.

(9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within five days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the Maritime and Coastguard Agency in accordance with the construction programme approved under condition 12(1)(b). Copies of all notices must be provided to the MMO.

(10) The undertaker must notify—

(a) the Hydrographic Office two weeks prior to the commencement and two weeks following completion of the authorised scheme in order that all necessary amendments to nautical charts are made; and

(b) the MMO, MCA and Trinity House once the authorised scheme is completed and any required lighting or marking has been established.

Chemicals, drilling and debris

10.—(1) All chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended) and managed in accordance with the "chemical risk assessment (CRA)" and "marine pollution contingency plan".

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive or the Environment Agency Pollution Prevention Guidelines. Any accidental spillages must be reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.

(3) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment and that concrete and cement mixing and washing areas are contained to prevent run off entering the water through the freeing ports. The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(4) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO marine pollution response team within the timeframe specified in the Marine Pollution Contingency Plan.

(5) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(6) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings must be obtained before the drilling commences, which may also require a marine licence.

(7) The undertaker must ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(8) The management of chemicals, drilling and control of debris detailed in 14(2)-(7) are to be managed in accordance with the "chemical risk assessment (CRA)" and "marine pollution contingency plan".

(9) At least ten days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

(a) loading facilities;

(b) vessels;

(c) equipment;

(d) shipment routes;

(e) transport;

(f) working schedules; and

(g) all components and materials to be used in the construction of the authorised scheme.

(10) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction.

(11) As an alternative to the completion of an audit sheet, with written approval from the MMO, the Undertaker may introduce a Dropped Object Procedure. If a Dropped Object Procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within six hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar), and the MMO may require obstructions to be removed from the seabed at the undertaker's expense

(12) The Undertaker is to agree with the MMO, prior to the commencement of works whether the Dropped Object Procedure or Audit Sheet is used.

Force majeure

11. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with condition 13(2) because the safety of human life and/or of the vessel is threatened—

(a) within 48 hours full details of the circumstances of the deposit must be notified to the MMO; and

(b) upon reasonable request by the MMO the unauthorised deposits must be removed at the expense of the undertaker.

Pre-construction plans and documentation

12.—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO—

(a) a "cable specification and installation plan" to be agreed in consultation with Trinity House and MCA which shows the route of the cable to ensure conformity with the description of Work No. 2A and Work No.3A. The plan is to include co-ordinates of the transmission works within Work No. 1A, Work No. 2A and Work No.3A;

(b) a detailed construction and monitoring programme to include details of—

(i) the proposed construction start date;

(ii) proposed timings for mobilisation of plant, delivery of materials and installation works; and

(iii) proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting in consultation with the relevant statutory nature conservation body. The preconstruction survey programme and all pre-construction survey methodologies are to be submitted to the MMO for written approval at least four months prior to the commencement of any survey works detailed within.

(c) a "construction method statement" in accordance with the construction methods assessed in the Environmental Statement and including details of—

(i) drilling methods and arrangements for disposal of drill arisings;

(ii) platform location and installation, including, scour protection and foundations which must be those that are able to be completely and safely removed, or reduced to a level below the seabed, at the time of decommissioning;

(iii) cable installation;

(iv) cable installation between MHWS and MLWS;

(v) impact piling soft start procedures;

(vi) the source of rock material used in construction and method to minimise contaminants and fines;

(vii) contractors;

(viii) vessels;

(ix) associated works;

(x) foundation scour protection requirements in an intelligent scour management plan; and

(xi) details of notification of the closure of the disposal site DG030 [DML3] / DG025 [DML4] upon completion of disposal activities

(d) a project "environmental management and monitoring plan" to include details of—

(i) a "marine pollution contingency plan (MPCP)" to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;

(ii) a "chemical risk assessment (CRA)" to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;

(iii) waste management and disposal arrangements;

(iv) the fisheries liaison officer appointed by the undertaker to be notified to the Marine Officer for the MMO's Northern Area and MMO Marine Licensing Team. Evidence of liaison should be collated so that signatures of attendance at meetings, agenda and minutes of meetings with the fishing industry can be provided to the MMO if required; and

(v) a "fisheries liaison plan (FLP)" in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including the fisheries liaison officer as in (iv) above) and a "co-existence plan".

(e) a "marine mammal mitigation protocol (MMMP)", the intention of which is to prevent injury to marine mammals, primarily auditory injury within the vicinity of any piling and appropriate monitoring surveys in accordance with the In Principle Monitoring Plan to be agreed in writing with the MMO in consultation with the relevant statutory nature conservation body and The Wildlife Trusts;

(f) a "cable specification and installation plan", following consultation with the relevant statutory nature conservation body, to include—

(i) technical specification of offshore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;

(ii) a staged cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques;

(iii) cable protection plan providing details of the need, type, sources, quality and installation methods for cable protection; and

(iv) details of methodology and extent of post lay survey, to confirm burial depths.

(g) an "offshore archaeological written scheme of investigation (WSI)" in relation to the offshore areas within the Order limits in accordance with the outline archaeological

written scheme of investigation, industry good practice and in consultation with English Heritage to include—

(i) details of responsibilities of the undertaker, archaeological consultant and contractor inclusive of an agreed programme for the publication of results;

(ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;

(iii) within three months of any survey being completed a timetable to be submitted to the MMO setting out the timeframe for the analysis and reporting of survey data;

(iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;

(v) monitoring during and post construction, including a conservation programme for finds;

(vi) archiving of archaeological material including ensuring that a copy of any agreed archaeological report is deposited with the English Heritage Archive by submitting an English Heritage OASIS form with a digital copy of the report;

(vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and

(h) Aids to Navigational Management Plan to be agreed in writing with the MMO following consultation with Trinity House and the MCA specifying—

(i) the aids to navigation to be established from the commencement of the authorised project to the completion of decommissioning;

(ii) the monitoring and reporting of the availability of aids to navigation; and

(iii) notifications and procedures for ensuring navigational safety following failures to aids to navigation.

(iv) in the event that a temporary cofferdam is constructed in Work No. 3A a method statement for the monitoring and redistribution of sediment must be agreed in writing with the MMO. The cofferdam method statement must include details of installation and management of the temporary cofferdam.

13.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 12 must be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 12.

Offshore safety management

14.—(1) Offshore works are not to commence until the MMO, in consultation with the MCA, has given written approval for an "Emergency Response and Co-operation Plan (ERCoP)" which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues." The ERCoP must include the identification of a point of contact for emergency response.

(2) The ERCoP is to be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA but nothing in this sub paragraph shall have the effect of removing any requirement to secure an ERCoP.

(3) No authorised development seaward of MHWS is to commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN371 "Offshore Renewable Energy Installations (OREIs) –

Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the name and function of any agent or contractor appointed to engage in the licensed activities to the MMO at least two weeks prior to. agents, contractors and vessels carrying out licensed activities.

(2) Each week during the construction of the authorised scheme a completed Hydrographic Note H102 is to be provided to the MMO listing the vessels currently and to be used in relation to the licensed activities.

(3) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Equipment and operation of vessels engaged in licensed activities

16.—(1) All vessels employed to perform the licensed activities must be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and (save in the case of remotely operated vehicles or vessels) must comply with paragraphs (2) to (5) below.

(2) All motor powered vessels must be fitted with:

(a) electronic positioning aid to provide navigational data;

(b) radar;

(c) echo sounder; and

(d) multi-channel VHF.

(3) All vessels' names or identification must be clearly marked on the hull or superstructure.

(4) All communication on VHF working frequencies must be in English; and

(5) No vessel must engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

Pre-construction monitoring

17.—(1) The undertaker must, in discharging condition 12(1)(b), and the requirement to prepare a "detailed construction and monitoring programme", include details for written approval by the MMO of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report. The survey proposals must be in accordance with the principles set out in the "In Principle Monitoring Plan" and must specify each survey's objectives and explain how it assists in either informing a useful and valid comparison with the post-construction position and/or enables the validation or otherwise of key predictions in the Environmental Statement. The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, where appropriate and necessary it is expected that the pre-construction surveys are to comprise—

(a) an appropriate survey to determine the location and reasonable extent of any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats), in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works; and

(b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order IA standard and side-scan surveys of the area(s) within Work No.1A and 2A within the Order limits in which it is proposed to carry out

construction works. This should include the identification of sites of historic or archaeological interest (A1 and A3 receptors) and any unidentified anomalies larger than 5m in diameter (A2 receptors), which may require the refinement, removal or introduction of archaeological exclusion zones and to confirm project specific micrositing requirements (for A2 receptors).

(3) The undertaker must carry out and complete the surveys to be undertaken under paragraph (1) in a timescale agreed with the MMO.

Construction monitoring

18.—(1) The undertaker must, in discharging condition 12(1)(b), submit details for approval by the MMO of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme.

(2) The "construction monitoring programme" must be submitted at least four months prior to the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The survey proposals must be in accordance with the principles set out in the "In Principle Monitoring Plan" and must specify each survey's objectives. The construction surveys must comprise where driven or part-driven pile foundations (for each specific foundation type) are proposed to be used, measurements of noise generated by the installation of one pile from each of the first four structures with piled foundations, following which the MMO will determine whether further noise monitoring is required. The results of the initial noise measurements must be provided to the MMO within six weeks of the installation of the first relevant foundation piece. The assessment of this report by the MMO must determine whether any further noise monitoring is required.

Post construction surveys

19.—(1) The undertaker must, in discharging condition 12(1)(b), submit details for written approval by the MMO of the four post-construction surveys proposed in paragraph (2), including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and specify each survey's objectives and explain how it assists in either informing a useful and valid comparison with the pre-construction position and/or enables the validation or otherwise of key predictions in the Environmental Statement.

(2) Subject to receipt of specific proposals, it is expected that the post-construction surveys will comprise of—

(a) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order IA standard and side scan sonar surveys around a sample of infrastructure locations that are considered appropriate to assess any changes in seabed topography. For this purpose the undertaker shall prior to the first such survey submit a desk based assessment (which takes account all factors which influence scour) to identify the sample of infrastructure locations that are considered appropriate with greatest potential for scour. The survey is to be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour;

(b) dependent on the outcome of the surveys undertaken in condition 17(2)(a) above, appropriate surveys to determine the effects of construction activity on any benthic habitats of conservation ecological and/or economic importance (including Annex 1 habitats) surveys in whole or in part inside the area(s) within the Order limits to validate habitats of conservation, economic importance including predictions made in the Environmental Statement and to identify the presence of any non-native species and wider community/type structure; and

(c) appropriate surveys to determine change in size and form of the drill disposal mounds over the lifetime of the authorised scheme.

(3) The undertaker must carry out the surveys under paragraph (1) and provide the reports in the agreed format in accordance with the timetable, as agreed in writing with the MMO following consultation with the relevant statutory nature conservation body.

20. A post construction maintenance plan must be submitted for written approval by the MMO at least four months prior to commissioning of the licensed activities, based upon the maintenance assessed with the Environmental Statement in the outline post construction maintenance plan. An update to the post construction maintenance plan must be submitted for approval every three years, or sooner in the event of any proposed major revision to planned maintenance activities, or the adoption of any new technologies or techniques applicable to programmed maintenance.

Aids to navigation

21. The undertaker must during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised development seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as directed by Trinity House

22. The undertaker must keep Trinity House, the MCA and the MMO informed of progress of the authorised development seaward of MWHS including—

(a) notice of commencement of construction of the authorised development within 24 hours of commencement having occurred;

(b) notice within 24 hours of any aids to navigational being established by the undertaker; and

(c) notice within 5 working days of completion of construction of the licensed marine activities.

23. The undertaker must submit reports quarterly to Trinity House detailing the working condition of aids to navigation. Reports may be submitted more frequently as specified by the Trinity House.

24. The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation as soon as possible and no later than 24 hours following the detection of any such failure.

25. . Following notification of a failure of aids to navigation, as soon as practical the undertaker must notify Trinity House and the MMO of timescales and plans for remedying such failures.

26. The undertaker must paint all structures as part of the authorised development seaward of MHWS yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House.

27. In case of damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the identification of damage, destruction or decay, notify Trinity House and the MMO.

28. The undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

PART 4A

Licensed Marine Activities – Marine Licence 4: Project B Offshore (Transmission - Work Nos. 2B, 3B and 2T)

Interpretation

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“Annex 1 Habitat” means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

“authorised deposits” means the substances and articles specified in paragraph 2(3);

“authorised scheme” means Work Nos. 1B, 2B, 3B and 2T described in paragraph 2 of this licence or any part or phase of those works;

“Bizco 3” means Doggerbank Project 4 Bizco Limited (Company number 07791964) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“cable crossings” means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

“cable protection” means the measures to protect cables from physical damage and exposure due to loss of seabed sediment, including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“cable specification and installation plan” means the document that includes the technical specification of offshore cables, a stage cable laying plan and burial risk assessment, a scope protection management and cable protection plan (if required), and details of post lay survey;

“chemical risk assessment (CRA)” means a document that includes information regarding how chemicals are used, stored and transported and submitted to the MMO for approval prior to construction;

“cofferdam” means a watertight enclosure pumped dry to permit construction work below the waterline;

“co-existence plan” means the plan which forms part of the fisheries liaison plan and details how the project will be constructed and operated taking account of the fisheries industry;

“commence” means the first carrying out of any part of the licensed activities except for the pre-construction surveys and “monitoring and commencing” must be construed accordingly;“condition” means a condition in Part 4B of this licence;

“construction and monitoring programme” means the programme which provides details on the construction start date, timings for mobilisation and proposed pre-construction survey(s);

“construction method statement (CMS)” means the document or documents that provide details of the final construction methods to be used;

“Emergency Response and Co-operation Plan (ERCoP)” means the document which provides details of the emergency response procedures;

“environmental management and monitoring plan (EMMP)” means the document that details minimum environmental management requirements expected of all contractors and subcontractors, with regards to marine pollution contingency, waste management and disposal, chemical risk assessment and relevant fisheries liaison matters;

“fisheries liaison officer (FLO)” means a person appointed by the undertaker charged with communication and liaison with the fishing industry as appropriate through the lifetime of the project;

“fisheries liaison plan (FLP)” means the plan which details how each undertaker of the projects will consult with fisheries stakeholders;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“HAT” means highest astronomical tide;

“highest astronomical tide” means the highest level which can be predicted to occur under average meteorological conditions;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“intelligent scour management plan” means the plan produced following pre-construction surveys identifying where scour protection is most likely to be required;

“the Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed activities” means the activities specified in Part 3A of this licence;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) of the order and any component part of any offshore platform, meteorological station, electricity or communication cable described in Part 1 of Schedule 1 (authorised development) of the Order (but not including the removal or replacement of foundations) to the extent outlined within the post construction maintenance plan, and “maintenance” must be construed accordingly;

“marine mammal mitigation protocol (MMMP)” means the plan defines mitigation to minimise potential impacts on marine mammals, and describes any associated monitoring (if required);

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor to its function;

“marine pollution contingency plan (MPCP)”, a component of the Environmental Management and Monitoring Plan (EMMP) means the plan that addresses risks, methods and procedures to deal with any potential marine pollution;

“MCA” means the Maritime and Coastguard Agency or any successor to its function;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“monopole foundation” means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers or abrupt steps. Sub types for wind turbine generators and meteorological stations, include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations must be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers,

electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"offshore converter platform" means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable High Voltage Direct Current transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

"the Offshore Order Limits Plan and Grid Co-ordinates Plan" means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

"offshore platform" means any of the following—

(a) an offshore accommodation or helicopter platform;

(b) an offshore collector platform;

(c) an offshore converter platform; or

(d) a combined platform

"the Order" means the Dogger Bank Teesside A and B Offshore Wind Farm Order 201X;

"the Order limits" means the limits shown on the Offshore Order Limits and Grid Co-ordinates Plan and the Onshore Order Limits and Grid Co-ordinates Plan;

"outline post construction maintenance plan" means the document certified as the outline post construction maintenance plan by the Secretary of State for the purposes of this Order;

"outline offshore archaeological written scheme of investigation" means the document certified as the outline offshore archaeological written scheme of investigation by the Secretary of State for the purposes of this Order;

"restricted works area" means the restricted work area shown on the offshore works plan;

"scour protection" means protection against foundation scour and. These measures include the use of bagged solutions filled with grout or other material protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

"scour protection management and cable protection plan" means the plan which details the foundation and cable protection requirements including installation methods;

"undertaker" means Bizco 3, or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water; and

"written scheme of archaeological investigation (WSI)" means the written scheme which details the procedures for dealing with archaeological findings.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are to be taken to be Greenwich Mean Time (GMT);

(b) all coordinates are to be taken to be latitude and longitude decimal degrees to six decimal places. The datum system used is World Geodetic System 1984 datum (WGS84).

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence is—

(a) Marine Management Organisation
Marine Licensing Team
Lancaster House
Hampshire Court
Newcastle upon Tyne
Tyne and Wear
NE4 7YH
Email: marine.consents@marinemanagement.org.uk
Tel: 0300 123 1032

(b) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

(c) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

(d) Marine and Coastguard Agency
Navigation Safety Branch
Bay 2/04
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9191;

(e) Natural England
Foundry House
3 Millsands
Riverside Exchange
Sheffield

S3 8NH
Tel: 0300 060 4911;

(f) English Heritage
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 057;

(5) For information only, the details of the local MMO office to the authorised scheme is—
Marine Management Organisation – Northern Marine Area
MMO Coastal Office
Neville House
Central Riverside
Bell Street
North Shields
Tyne and Wear
NE30 1LJ
Email: northshields@marinemanagement.org.uk
Tel: 0191 257 4520

Details of licensed marine activities

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions—

(a) the deposit at sea of the substances and articles specified in paragraph (3) below;

(b) the construction of works specified in paragraph (2) but not subparagraph (2)(a) or (d)(i), (ii), (iii) in or over the sea and/or on or under the sea bed including the removal, reconstruction or alteration of the position of subsea cables and pipelines; and

(c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) Subject to sub-paragraph (6) such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 1B—

(a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundation, situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (e) below;

Coordinates for the array area

Point	*Latitude (Decimal Degrees)*	*Longitude (Decimal Degrees)*
25	55.12443	2.14572
26	55.13002	2.21780

51	54.97070	2.50189
52	54.96096	2.48529
56	54.83864	2.27783
57	54.83862	2.26336
24	55.01111	1.95454

(b) maximum of seven offshore platforms comprising the following:

(i) up to four offshore collector platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundation;

(ii) an offshore converter platform situated within the array areas specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundation;

(iv) or any of the platforms comprised in Work No.1B(b)(i) to Work No. 1B(b)(ii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations.

(c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1B(a) either fixed to the seabed by monopole, multileg or gravity base type foundation or floating structure secured by chain and anchor; or

(d) a network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—

(i) any of the wind turbine generators comprising Work No. 1B(a);

(ii) any of the wind turbine generators comprising Work No. 1B(a) and Work Nos. 1B(c);

(iii) any of the works comprising Work No. 1B(b) and Work No.1B (c);

(iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

(e) up to ten vessel mooring(s) situated within the array area specified in the table Work No. 1B(a) consisting of a single floating buoy secured by chain and anchor anchored to the seabed;

Work No. 2B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid on or beneath the seabed between Work No. 1A(b) and Work No. 3B and including cable crossings;

Work No. 3B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground between mean low water springs and mean high water springs and connecting Work No. 2B with Work No. 4B;

Work No. 2T – a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads, alongside the cable corridors.

Ancillary works in connection to the above-mentioned works comprising—

(a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;

(b) temporary or permanent buoys, beacons, fenders and other navigational warning on ship impact protection works;

(c) temporary works for the protection of land on structures affected by the authorised scheme;

(d) cable protection, scour protection or dredging; and

(e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping.

(3) The substances or articles authorised for deposit at sea are—

(a) iron/steel/aluminium;

(b) stone and rock;

(c) concrete/grout;

(d) sand and gravel;

(e) plastic/synthetic;

(f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and

(g) marine coatings, other chemicals and timber;

(4) This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity may commence until a written decommissioning programme in accordance with an approved programme under section 105(2) of the 2004 Act, has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out any such works, the undertaker must notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

PART 4B

Conditions

Detailed offshore design parameters

3.—(1) The total number of offshore platforms to be licensed must not exceed seven comprising of—

(a) up to four offshore collector platform(s);

(b) an offshore converter platform;

(c) up to two offshore accommodation or helicopter platform(s); and

(d) or any of the platforms comprised in (2)(a) to (c) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundation.

(2) The dimensions of any offshore collector platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 75 metres in length;

(b) 75 metres in width; and

(c) 85 metres in height above HAT.

(3) The dimensions of any offshore converter platform forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(4) The dimensions of any offshore accommodation or helicopter platform(s) forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed—

(a) 125 metres in length;

(b) 100 metres in width; and

(c) 105 metres in height above HAT.

(5) The dimensions of any combined platforms forming part of the authorised development (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(6) Offshore platform foundation structures forming part of the authorised development must be one or more of the following foundation options: gravity base or multileg.

(7) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised development may—

(a) have more than twenty four driven piles; and

(b) have a pile diameter of greater than 2.75 metres and employ a hammer energy during installation of greater than 1,900kJ.

(8) Within Work No. 1B the maximum seabed footprint area per offshore foundation (excluding scour protection) forming part of the authorised development must not exceed—

(a) offshore collector platform must not exceed 5,625m2;

(b) offshore converter platform must not exceed 12,500m2; and

(c) offshore accommodation or helicopter platform must not exceed 12,500m2.

(9) No offshore collector platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 9,025m2.

(10) No offshore converter platform foundation may have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(11) No offshore accommodation or helicopter platform foundation will have a seabed footprint area of (including subsea/scour protection) of more than 17,400m2.

(12) The number of vessels actively carrying out impact piling as part of the installation of driven pile foundations for the authorised scheme must at no time exceed two within Work No.1B.

4. The total footprint of offshore platform foundation structures within Work 1B (including scour protection and drill arising deposits) forming part of the authorised development must not exceed 88,300m2.

5.—(1) Within Work No. 1B, 2B and 3B the High Voltage Direct Current cables forming part of the authorised development must not exceed—

(a) The number of two;

(b) A fibre optic cable; and

(c) The total length of 484.4 km.

(2) Within Work No. 1B and 2B the High Voltage Direct Current cables forming part of the authorised development must not exceed—

(a) The cable protection (excluding cable crossings) area of 2.31km2; and

(b) The cable protection (excluding cable crossings)volume of 242,473m3.

6. Within Work No. 1B the High Voltage Alternating Current cables forming part of the authorised development must not exceed—

(a) The length of 1,270km;

(b) The cable protection (excluding cable crossings) area of 890,000m2;

(c) The cable protection (excluding cable crossings) volume of 572,000m3.

7. Within Work No. 1B the High Voltage Alternating Current cable crossings forming part of the authorised development must not exceed—

(a) The number of 24;

(b) The cable crossing material volume of 132,700 m3; and

(c) The total footprint of 147,100m2.

8. Within Work No. 1B and 2B the High Voltage Direct Current cable crossings must not exceed—

(a) The number of 16;

(b) The cable crossing material volume of 88,450m3; and

(c) The total footprint of 98,100m2.

Notifications and inspections

9.—(1) The undertaker must ensure that—

(a) prior to carrying out any of the licensed activities under this licence, the undertaker must inform the MMO of—

(i) the organisation and primary point of contact undertaking the licensed activities;

(ii) the works being undertaken pursuant to this licence comprising those works necessary up to the point of connection with the generation assets including, without prejudice, the generality of paragraph (2) above—

(aa) up to four offshore collector platform(s); and

(bb) a network of cables for the transmission of electricity and electronic communications.

(iii) cable installation;

(iv) impact piling soft start procedures;

(v) the maximum total area and volume for any cables to be constructed pursuant to this licence; and

(vi) the maximum total area and volume for any cable protection to be constructed within the area of export cables pursuant to this licence.

(b) All works notified under this paragraph when combined with any works notified in condition (13) of Marine Licence 1, condition (13) of Marine Licence 2 and condition (9) of Marine Licence 3 must not exceed the maximum parameters set out in Schedule 1 of the DCO.

(c) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it as provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 15; and

(ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 15.

(d) within 28 days of receipt of a copy of this licence those organisations and primary points of contact referred to at paragraph (a) above must provide a completed confirmation form to the MMO confirming that they have read and must comply with the terms of the conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 15 are permitted to carry out the licensed activities;

(3) Copies of this licence must also be available for inspection at the following locations:

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit for the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made.

(4) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all reasonable times at the locations set out in paragraph 3(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Marine Licensing Team and the MMO Coastal Office in writing at least five working days prior to the commencement of the licensed activities or any phase of them.

(7) At least seven days prior to the commencement of the licensed activities or any phase of them the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant phase.

(8) The undertaker must ensure that a notice to mariners is issued at least ten working days prior to the commencement of the licensed activities or any phase of them advising of the start date of Work Nos. 2B and 3B and the expected vessel routes from the local construction ports to the relevant locations.

(9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within five days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the Maritime and Coastguard Agency in accordance with the construction programme approved under condition 12(1)(b). Copies of all notices must be provided to the MMO.

(10) The undertaker must notify—

(a) the Hydrographic Office two weeks prior to the commencement and two weeks following completion of the authorised scheme in order that all necessary amendments to nautical charts are made; and

(b) the MMO, MCA and Trinity House once the authorised scheme is completed and any required lighting or marking has been established.

Chemicals, drilling and debris

10.—(1) All chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended) and managed in accordance with the "chemical risk assessment (CRA)" and "marine pollution contingency plan".

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive or the Environment Agency Pollution Prevention Guidelines. Any accidental spillages must be reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.

(3) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment and that concrete and cement mixing and washing areas are contained to prevent run off entering the water through the freeing ports. The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(4) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.

(5) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(6) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings must be obtained before the drilling commences, which may also require a marine licence.

(7) The undertaker must ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(8) The management of chemicals, drilling and control of debris detailed in 14(2)-(7) are to be managed in accordance with the "chemical risk assessment (CRA)" and "marine pollution contingency plan".

(9) At least ten days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

(a) loading facilities;

(b) vessels;

(c) equipment;

(d) shipment routes;

(e) transport;

(f) working schedules; and

(g) all components and materials to be used in the construction of the authorised scheme.

(10) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction.

(11) As an alternative to the completion of an audit sheet, with written approval from the MMO, the Undertaker may introduce a Dropped Object Procedure. If a Dropped Object Procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within six hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar), and the MMO may require obstructions to be removed from the seabed at the undertaker's expense

(12) The Undertaker is to agree with the MMO, prior to the commencement of works whether the Dropped Object Procedure or Audit Sheet is used.

Force majeure

11. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with condition 13(2) because the safety of human life and/or of the vessel is threatened—

(a) within 48 hours full details of the circumstances of the deposit must be notified to the MMO; and

(b) upon reasonable request by the MMO the unauthorised deposits must be removed at the expense of the undertaker.

Pre-construction plans and documentation

12.—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO—

(a) a “cable specification and installation plan” to be agreed in consultation with Trinity House and MCA which shows the route of the cable to ensure conformity with the description of Work Nos. 2B and 3B. The plan is to include co-ordinates of the transmission works within Work No. 1B, Work No. 2B and Work No.3B.

(b) a detailed construction and monitoring programme to include details of—

(i) the proposed construction start date;

(ii) proposed timings for mobilisation of plant, delivery of materials and installation works; and

(iii) proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting in consultation with the relevant statutory nature conservation body. The preconstruction survey programme and all pre-construction survey methodologies are to be submitted to the MMO for written approval at least four months prior to the commencement of any survey works detailed within;

(c) a “construction method statement” in accordance with the construction methods assessed in the Environmental Statement and including details of—

(i) drilling methods and arrangements for disposal of drill arisings;

(ii) platform location and installation, including scour protection and foundations which must be those that are able to be completely and safely removed, or reduced to a level below the seabed, at the time of decommissioning;

(iii) cable installation;

(iv) cable installation between MHWS and MLWS;

(v) impact piling soft start procedures;

(vi) the source of rock material used in construction and method to minimise contaminants and fines;

(vii) contractors;

(viii) vessels;

(ix) associated works;

(x) foundation scour protection requirements in an intelligent scour management plan; and

(xi) details of notification of the closure of the disposal site DG030 [DML3] / DG025 [DML4] upon completion of disposal activities

(d) a project “environmental management and monitoring plan” to include details of—

(i) a “marine pollution contingency plan (MPCP)” to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;

(ii) a “chemical risk assessment (CRA)” to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;

(iii) waste management and disposal arrangements;

(iv) the fisheries liaison officer appointed by the undertaker to be notified to the Marine Officer for the MMO’s Northern Area and MMO Marine Licensing Team. Evidence of liaison should be collated so that signatures of attendance at meetings, agenda and minutes of meetings with the fishing industry can be provided to the MMO if required; and

(v) a “fisheries liaison plan (FLP)” in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including the fisheries liaison officer as in (iv) above) and a “co-existence plan”.

(e) a “marine mammal mitigation protocol (MMMP)”, the intention of which is to prevent injury to marine mammals, primarily auditory injury within the vicinity of any piling

and appropriate monitoring surveys in accordance with the In Principle Monitoring Plan to be agreed in writing with the MMO in consultation with the relevant statutory nature conservation body and The Wildlife Trusts;

(f) a "cable specification and installation plan", following consultation with the relevant statutory nature conservation body, to include—

(i) technical specification of offshore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;

(ii) a staged cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques;

(iii) cable protection plan providing details of the need, type, sources, quality and installation methods for cable protection; and

(iv) details of methodology and extent of post lay survey, to confirm burial depths.

(g) an "offshore archaeological written scheme of investigation (WSI)" in relation to the offshore areas within the Order limits in accordance with the outline archaeological written scheme of investigation, industry good practice and in consultation with English Heritage to include—

(i) details of responsibilities of the undertaker, archaeological consultant and contractor inclusive of an agreed programme for the publication of results;

(ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;

(iii) within three months of any survey being completed a timetable to be submitted to the MMO setting out the timeframe for the analysis and reporting of survey data;

(iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;

(v) monitoring during and post construction, including a conservation programme for finds;

(vi) archiving of archaeological material including ensuring that a copy of any agreed archaeological report is deposited with the English Heritage Archive by submitting an English Heritage OASIS form with a digital copy of the report;

(vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and

(h) Aids to Navigational Management Plan to be agreed in writing with the MMO following consultation with Trinity House and the MCA specifying—

(i) the aids to navigation to be established from the commencement of the authorised project to the completion of decommissioning;

(ii) the monitoring and reporting of the availability of aids to navigation; and

(iii) notifications and procedures for ensuring navigational safety following failures to aids to navigation.

(iv) in the event that a temporary cofferdam is constructed in Work No. 3A a method statement for the monitoring and redistribution of sediment must be agreed in writing with the MMO. The cofferdam method statement must include details of installation and management of the temporary cofferdam.

13.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 12 must be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 12.

Offshore safety management

14.—(1) Offshore works are not to commence until the MMO, in consultation with the MCA, has given written approval for an "Emergency Response and Co-operation Plan (ERCoP)" which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues." The ERCoP must include the identification of a point of contact for emergency response.

(2) The ERCoP is to be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA but nothing in this sub paragraph shall have the effect of removing any requirement to secure an ERCoP.

(3) No authorised development seaward of MHWS is to commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN371 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the name and function of any agent or contractor appointed to engage in the licensed activities to the MMO at least two weeks prior to agents, contractors and vessels carrying out licensed activities.

(2) Each week during the construction of the authorised scheme a completed Hydrographic Note H102 is to be provided to the MMO listing the vessels currently and to be used in relation to the licensed activities.

(3) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Equipment and operation of vessels engaged in licensed activities

16.—(1) All vessels employed to perform the licensed activities must be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and (save in the case of remotely operated vehicles or vessels) must comply with paragraphs (2) to (5) below.

(2) All motor powered vessels must be fitted with:

(a) electronic positioning aid to provide navigational data;

(b) radar;

(c) echo sounder; and

(d) multi-channel VHF.

(3) All vessels' names or identification must be clearly marked on the hull or superstructure.

(4) All communication on VHF working frequencies must be in English; and

(5) No vessel must engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

Pre-construction monitoring

17.—(1) The undertaker must, in discharging condition 12(1)(b), and the requirement to prepare a "detailed construction and monitoring programme", include for written approval by the MMO of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report. The survey proposals must be in accordance with the principles set out in the "In Principle Monitoring Plan" and must specify each survey's objectives and explain how it assists in either informing a useful and valid comparison with the

post-construction position and/or enables the validation or otherwise of key predictions in the Environmental Statement. The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, where appropriate and necessary it is expected that the pre-construction surveys shall comprise—

(a) an appropriate survey to determine the location and reasonable extent of any benthic habitats of conservation ecological and/or economic importance including (Annex 1 habitat) in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works; and

(b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order IA standard and side-scan surveys of the area(s) within Work No.1B and 2B within the Order limits in which it is proposed to carry out construction works. This should include the identification of sites of historic or archaeological interest (A1 and A3 receptors) and any unidentified anomalies larger than 5m in diameter (A2 receptors), which may require the refinement, removal or introduction of archaeological exclusion zones and to confirm project specific micrositing requirements (for A2 receptors).

(3) The undertaker must carry out and complete the surveys to be undertaken under paragraph (1) in a timescale agreed with the MMO.

Construction monitoring

18.—(1) The undertaker must, in discharging condition 12(1)(b), submit details for approval by the MMO of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme.

(2) The "construction monitoring programme" must be submitted at least four months prior to the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The survey proposals must be in accordance with the principles set out in the "In Principle Monitoring Plan" and must specify each survey's objectives. The construction surveys must comprise where driven or part-driven pile foundations (for each specific foundation type) are proposed to be used, measurements of noise generated by the installation of one pile from each of the first four structures with piled foundations, following which the MMO will determine whether further noise monitoring is required. The results of the initial noise measurements must be provided to the MMO within six weeks of the installation of the first relevant foundation piece. The assessment of this report by the MMO must determine whether any further noise monitoring is required.

Post construction surveys

19.—(1) The undertaker must, in discharging condition 12(1)(b), submit details for written approval by the MMO of the four post-construction surveys proposed in paragraph (2), including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and specify each survey's objectives and explain how it assists in either informing a useful and valid comparison with the pre-construction position and/or enables the validation or otherwise of key predictions in the Environmental Statement.

(2) Subject to receipt of specific proposals, it is expected that the post-construction surveys comprise of—

(a) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order IA standard and side scan sonar surveys around a sample of infrastructure locations that are considered appropriate to assess any changes

in seabed topography. For this purpose the undertaker shall prior to the first such survey submit a desk based assessment (which takes account all factors which influence scour) to identify the sample of infrastructure locations that are considered appropriate with greatest potential for scour. The survey is to be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour;

(b) dependent on the outcome of the surveys undertaken in condition 17(2)(a) above, appropriate surveys to determine the effects of construction activity on any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats) in whole or in part inside the area(s) within the Order limits to validate predictions made in the Environmental Statement and to identify the presence of any non-native species and wider community/type structure; and

(c) appropriate surveys to determine the change in size and form of the drill disposal mounds over the lifetime of the authorised scheme.

(3) The undertaker must carry out the surveys under paragraph (1) and provide the reports in the agreed format in accordance with the timetable, as agreed in writing with the MMO following consultation with the relevant statutory nature conservation body.

20. A post construction maintenance plan must be submitted for written approval by the MMO at least four months prior to commissioning of the licensed activities, based upon the maintenance assessed with the Environmental Statement in the outline post construction maintenance plan. An update to the post construction maintenance plan must be submitted for approval every three years, or sooner in the event of any proposed major revision to planned maintenance activities, or the adoption of any new technologies or techniques applicable to programmed maintenance.

Aids to navigation

21. The undertaker must during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised development seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as directed by Trinity House.

22. The undertaker must keep Trinity House, the MCA and the MMO informed of progress of the authorised development seaward of MWHS including—

(a) notice of commencement of construction of the authorised development within 24 hours of commencement having occurred;

(b) notice within 24 hours of any aids to navigational being established by the undertaker; and

(c) notice within 5 working days of completion of construction of the licensed marine activities.

23. The undertaker must submit reports quarterly to Trinity House detailing the working condition of aids to navigation. Reports may be submitted more frequently as specified by the Trinity House.

24. The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation as soon as possible and no later than 24 hours following the detection of any such failure.

25. . Following notification of a failure of aids to navigation, as soon as practical the undertaker must notify Trinity House and the MMO of timescales and plans for remedying such failures.

26. The undertaker must paint all structures as part of the authorised development seaward of MHWS yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House.

27. In case of damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the identification of damage, destruction or decay, notify Trinity House and the MMO.

28. The undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

SCHEDULE 8

Article 43

Protective Provisions

PART 1

Protection for electricity, gas, water and sewerage undertakers

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity utility undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989)(**a**), belonging to or maintained by that utility undertaker;

(b) in the case of a gas utility undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water utility undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(d) in the case of a sewerage utility undertaker

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

"utility undertaker" means—

(e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**c**);

(g) a water utility undertaker within the meaning of the Water Industry Act 1991; and

(h) a sewerage utility undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the onshore works, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

(**a**) 1989 c.29.
(**b**) 1991 c.56.
(**c**) 1986 c.44.

3. This Part of this Schedule does not apply to—

(a) apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act; and

(b) the offshore works.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) must authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the

undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorise development, the arbitrator must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised scheme for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker must be entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under subparagraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 must apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph must preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan, section and description.

(6) The undertaker must not be required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with—

(a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in

connection with the acquisition of rights or exercise of statutory powers for such apparatus);

(b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;

(c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under this Order; and

(d) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any such power,

within a reasonable time of being notified by the utility undertaker that it has incurred such expenses.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided by the utility undertaker, the undertaker must —

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) must impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise must be made without the consent of the undertaker which, if it withholds such consent, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this Part of this Schedule must affect the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

11. In relation to any dispute arising under this paragraph the reference in article 44 (arbitration) to the Institution of Civil Engineers must be read as a reference to the Institution of Engineering and Technology.

PART 2

Protection of Network Rail Infrastructure Limited

1. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 736 of the Companies Act 1985(**a**) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the 1993 Act) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(**a**) 1985 c.6.

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the onshore works as is situated upon, across, under, over or within 15 metres of, or may in any way affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures, and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 20 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(4) Where Network Rail is asked to give its consent pursuant to this paragraph 4, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further period of 28 days the engineer has not intimated his approval or disapproval, he must be deemed to have approved the plans as submitted.

(3) If by the expiry of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, decommissioning and

removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works) and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker, in either case with all reasonable dispatch and the undertaker may not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction must be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule must impose any liability on the undertaker with respect to any costs, damages, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractor or agents.

7. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or during a period of twenty four months after the completion of that work in order to ensure the safety of railway property or the continued safe and efficient operation of the railway of Network Rail such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail's desires itself to construct that part of the specified work which if in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part

of the specified work and the undertaker must, notwithstanding any such approval of the specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by means of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such savings must be set off against any such sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the onshore works where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the onshore works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph must apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the onshore works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph(a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph(a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) must have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular operation of the onshore works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) must apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph must be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 44 (arbitration) to the Institution of Civil Engineers must be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it must have first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify Network Rail and keep Network Rail indemnified from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this Part of this Schedule.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs must, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work, or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the 1993 Act.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide to the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, must prejudice or affect the operation of Part 1 of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 42 (Certification of plans) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans are submitted to and certified by the Secretary of State in accordance with article 42 (Certification of plans) are certified by the Secretary of State, provide to Network Rail a set of plans which relate to the specified works in the form of a computer disc with read only memory.

PART 3

For the protection of operators of electronic communications code networks

1.—(1) The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Schedule—

"conduit system" has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

"electronic communications apparatus" has the same meaning as in the electronic communication code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**a**);

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(**a**) See section 106.

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

2. The temporary stopping up or diversion of any street under article 14 (temporary stopping up of streets) does not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that street.

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator, the promoter must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Sub-paragraph (1) does not apply to—

(a) any apparatus in respect of which the relations between the promoter and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

(3) Nothing in sub-paragraph (1) imposes any liability on the promoter with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(4) The operator must give the promoter reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the promoter which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Any difference arising between the promoter and the operator under this Part of this Schedule is to be referred to and settled by arbitration under article 44 (arbitration).

PART 4

Protection of offshore cables and pipelines

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Company concerned.

2. In this Part of this Schedule—

"cables" means the whole or any part of UK-Denmark-4 cable and the Pangea North Cable System;

"Company" means; BT in relation to the UK-Denmark-4 cable; Shell UK Limited in relation to the Shearwater to Bacton (SEAL) pipeline; Gassco in relation to the Langeled Pipeline; and Alcatel-Lucent Submarine Networks SAS in relation to the Pangea North Cable System;

"construction" includes execution, placing and altering and cognate expressions must be construed accordingly;

"Langeled Pipeline" means the underwater pipeline transporting Norwegian natural gas to the United Kingdom across the North Sea;

"Pangea North Cable System" means the submarine telecommunications cable system laid between the UK and the Netherlands

"pipelines" means the whole or any part of the Langeled pipeline and the Shearwater to Bacton (SEAL) pipeline which are used for the conveyance of any hydrocarbon fuel and in respect of which a Company has an interest for the time being, together with any associated plant and equipment serving those pipelines;

"plans" includes sections, drawings, calculations, methods of construction, particulars and specifications;

"protected property" means the cables and pipelines—

(a) any part of which is situated within the Order limits for the offshore works; and

(b) in respect of which a Company has an interest for the time being;

"protective works" has the meaning given in paragraph 11 below;

"Shearwater to Bacton (SEAL) Pipeline" means the gas pipeline connecting the Shell terminal in the UK to the Shearwater and Elgin-Franklin gas fields in the Central North Sea;

"specified matter" means any of the following—

(a) the construction, maintenance, operation or use of the offshore works;

(b) the construction, maintenance, operation or use of any protective works or safeguarding works; and

(c) any preparatory action in connection with any activity mentioned in (a) or (b) above;

"Surveyor" means the surveyor or engineer appointed for the purposes of this Part 4 of this Schedule 9;

"UK-Denmark-4 cable" means the out of service telecommunications cable laid between the UK and Denmark;

"works" means Work Nos. 1A, 1B, 2A, 2B, 2T, 3A and 3B.

3. In this Part of this Schedule references to the Company are references to any (or, as the case may be, each) Company which has an interest in the protected property concerned for the time being.

4. In this Part of this Schedule references to a Company include references to its successors in title in respect of any protected property.

5. Notwithstanding anything in this Order as shown on the works plans the undertaker must not pursuant to the powers of this Order appropriate and remove any protected property otherwise than by agreement with the Company.

6. Notwithstanding anything in this Order, except in the case of any part of the protected property which the Company certifies in writing is permanently disused, the undertaker must not exercise the powers of the Order to relocate any protected property until suitable alternative facilities have been provided by the undertaker and are available for use to the reasonable satisfaction of the Company.

7. The undertaker must use its best endeavours—

(a) in exercising any of the powers in this Order to avoid or (failing avoidance) to minimise any damage or disruption to the protected property; and

(b) without prejudice to (a) above, to ensure that the works do not at any time fall into such a condition as to compromise the integrity or operation of the protected property.

8. Not less than eight months before commencing to construct the works the undertaker must furnish to the Company a programme for the works proposed and a general indication of the nature and location of those works and, if within 28 days from the receipt by a Company of that programme and general indication the Company gives notice in writing to the undertaker that any part of the offshore works indicated in the programme may in any way affect protected property, paragraphs 10 and 11 below must with respect to that part of those works.

9. Upon giving any notice to the undertaker under paragraph 8 above, the Company must furnish existing drawings showing to the best of its knowledge the position and depth of the relevant part of the protected property.

10. Not less than four months before commencing to construct any part of the offshore works which may significantly affect the protected property, the undertaker must furnish to the Company detailed plans and specifications of the relevant part of the offshore works and must have due regard to any representations made by a Company relating to such plans or to the programme for the works and make reasonable changes required to avoid risk of harm to the cables by the construction.

11. At any time within a period of one month from the receipt by the Company of the plans referred to in paragraph 10 above the Company may by notice in writing to the undertaker specify any reasonable temporary or permanent works or measures (the "protective works") which in its reasonable opinion should be carried out or taken by the undertaker before the commencement of or during the construction of the works in order to ensure the stability of the protected property (shown on the drawings furnished by the Company under paragraph 9 above) or to protect them from injury and such protective works must be constructed by the undertaker at its own expense and under the inspection (if any) of the Company.

12. Except in the case of protective works that the Company has informed the undertaker in writing may be carried out during the construction of the works, the undertaker must not commence the construction of any work within 50 metres of, or which may in any way affect, the protected property until the protective works relating to the work have been completed to the reasonable satisfaction of the Company.

13. In the case of protective works of which the Company has informed the undertaker in writing as mentioned in paragraph 12 above, the undertaker must comply with all reasonable requirements of the Company arising from its inspection under paragraph 11 above as promptly as practicable after the undertaker has been notified of such requirements.

14. Except in an emergency (when it must give such notice as may be reasonably practicable) the undertaker must give the Company not less than 56 days' notice of its intention to carry out any works for the repair or maintenance of the works in so far as such works may affect or interfere with the protected property.

15. The undertaker must repay to the Company the reasonable expenses properly incurred by the Company in or in connection with the removal and relaying or replacing of any part of protected property, including the provision, laying down or placing of any alternative facilities.

16. The undertaker must repay to the Company the reasonable expenses properly incurred by the Company in or in connection with the preparation of drawings or notice referred to in paragraphs 8 or 10 above and by the Company in the watching and inspecting of any protective works relating to protected property.

17. The preceding provisions of this Part of this Schedule must not apply in relation to any protected property laid by or for the use of the Company after the coming into force of this Order.

18. Nothing in this Part of this Schedule must affect any enactment or any regulations made under any enactment or any agreement regulating the relations between the undertaker and the Company in respect of any protected property laid within the Order limits for the offshore works on the date on which this Order comes into force.

PART 5

For the protection of the Environment Agency

1.—(1) For the protection of the Agency, the following provisions, unless otherwise agreed in writing between the undertaker and the Agency, have effect.

(2) In this Part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are construed accordingly;

"drainage work" means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

"the fishery" means any watercourse within the limits of deviation containing fish and fish in such waters and the spawn, habitat or food of such fish;

"plans" includes sections, drawings, specifications and method statements;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(c) cause obstruction to the free passage of fish or damage to any fishery; or

(d) affect the conservation, distribution or use of water resources;

"watercourse" means all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

2.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within twenty eight days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 12.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within two months of the submission of the plans for approval or receipt of further particulars if such particulars have been required by the Agency and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without limitation on the scope of paragraph 2 but subject always to the provision of that paragraph as to reasonableness, the requirements which the Agency may make under that

paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage;

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work.

4.—(1) Subject to sub-paragraph (2), the specified work, and all protective works required by the Agency under paragraph 3 must be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency, and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than fourteen days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 8, if within a reasonable period, being not less than twenty eight days from the date when a notice under sub-paragraph (4) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

5.—(1) Subject to sub-paragraph (6), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than twenty eight days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious

progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with the provisions of this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part of them until it has obtained the consent or complied with the condition unless the cessation of the specified works or part of them would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prescribed by the powers of the Order from doing so.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

7.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work, damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8.—(1) Nothing in paragraphs 4(4), 5(3), 6, 7(3) and (4) authorises the Agency to execute works on or affecting the authorised development without the prior consent in writing of the undertaker.

(2) Consent under sub-paragraph (1) must not be unreasonably withheld or delayed and the undertaker is deemed to have given its consent if it has not refused consent within two calendar months of receiving a written request by the Agency.

9. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

10.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any damage to the fishery;

(c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;

(d) any flooding or increased flooding of any such lands; or

(e) inadequate water quality in any watercourse or in any groundwater, which is caused by the construction of any of the specified works or any act or omission of the undertaker its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

11. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

12. Any dispute arising between the undertaker and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 44 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and after notice in writing by one to the other.

PART 6

For the protection of owners and operators at Wilton

1.—(1) The following provisions, unless otherwise agreed in writing between the parties, have effect.

(2) In this Part of this Schedule:-

"alternative apparatus" means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

"apparatus" means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"construction access plan" means a plan identifying how access will be maintained to land within the Wilton Complex during the construction of the authorised project and shall identify—

(a) any restrictions on access, including the timing of restrictions;

(b) any alternative accesses or routes of access which may be available to the undertaker using the Wilton Site Roads within the Wilton Complex;

(c) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works which they have notified to the other operators at the Wilton Complex as of the date when the plan is published) have been taken into account in preparing the plan.

"description of the works" means a detailed description of those works and includes full detail of any protective measures proposed to be incorporated as part of those works (for example to safeguard any apparatus the removal of which has not been required by the undertaker under paragraph 4 (2);

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"maintenance access plan" means a plan identifying how access will be maintained to land within the Wilton Complex during the maintenance of the authorised project and shall identify—

(d) any restrictions on access, including the timing of restrictions;

(e) any alternative accesses or routes of access which may be available to the undertaker using the Wilton Site Roads within the Wilton Complex;

(f) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works which they have notified to the other operators at the Wilton Complex as of the date when the plan is published) have been taken into account in preparing the plan.

"major works" means works by any person requiring the closure diversion or regulation of any of the Wilton Site Roads;

"owner" in the context of the Wilton Land means any party with an interest in the land, with rights in, on under over the Wilton Land or with apparatus in, on or under the Wilton Land and in the context of the Wilton Complex means any owner or occupier within the Wilton Complex and their successors in title;

"operator" means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Wilton Complex but who is not an owner in the context of the Wilton Land or the Wilton Complex.

"Wilton Complex" means the industrial and manufacturing plant shown edged red on Plan T-MIS-0065-01;

"Wilton Land" means the Wilton Complex and Plots 42A, 42B, 43A, 43B, 44A, 44B, 63A, 63B, 64, 65, 66, 67A, 67B, 67C, 67D, 67E, 67F, 68, 86 and 87; and

(3) "Wilton Site Roads" mean any of the roads shown in [red] on T-MIS-0066-01, to the extent these are within the Wilton Complex and includes any part of such a road or part of the width of such a road.

2. The following provisions of this Part of this Schedule have effect for the benefit of owners and operators within the Wilton Complex and owners of the Wilton Land.

3.—(1) The undertaker must not exercise the powers conferred by article 15 (temporary stopping up of streets), article 16 (access to works), article 18 (discharge of water), article 20 (authority to survey and investigate the land), article 22 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (private rights of way), article 28 (rights under or over streets), article 29 (temporary use of land for carrying out the authorised project) and article 30 (temporary use of land for maintaining the carrying out the authorised project) (together "the identified powers") over the Wilton Land without the consent in writing of the relevant owner of the Wilton Land over whose land the exercise of any of the identified powers is sought, or without the written consent of the relevant operator where the exercise of any identified powers affects apparatus in the Wilton Land that is operated for the benefit of the Wilton Complex.

(2) Where a person is asked to give consent pursuant to paragraph 3 (1), such consent must not be unreasonably withheld.

(3) In the event that—

(a) the undertaker considers that consent has been unreasonably withheld it may refer the request to an expert appointed in accordance with paragraph 19 for determination.

(b) an owner or operator fails to determine a request for consent within a period of 30 days consent shall be deemed to have been unreasonably withheld and the undertaker may refer the request to an expert appointed in accordance with paragraph 19 for determination.

(4) The undertaker must not in the exercise of the powers of this Order acquire, appropriate, extinguish or suspend any rights in land where the authorised project can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment or suspension.

(5) The undertaker in the exercise of the powers of this Order must at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on owners and operators including any disruption to access and supplies of utilities and other services which are required by them in order to carry out their operations.

(6) Save in the case of emergency, or as otherwise provided for within this Part, the undertaker shall give the affected owners of the Wilton Land a minimum of 30 days notice of the proposed exercise of any of the identified powers.

(7) Before carrying out any works on any part of the authorised project on the Wilton Land the undertaker must put in place a policy of insurance, consistent with the terms proposed in this sub-paragraph or as may be determined by the expert in accordance with paragraph 19, with a reputable insurer against consequential loss and damage suffered by owners of the Wilton Land and evidence of that insurance shall be provided on request to owners of the Wilton Land.

(8) Not less than 90 days before the carrying out of any works on any part of the authorised project on the Wilton Land, or when proposing to change the terms of the insurance policy, the undertaker must notify the owners of the Wilton Land of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(9) The undertaker shall maintain insurance in relation to works or the use of the authorised project affecting owners of the Wilton Land during the operation of the authorised project at the level specified in the notice of proposed insurance.

(10) If any owner or operator believes that any proposed exercise of the identified powers is in breach of paragraph 3(1) or 3(4) or there is a dispute about the terms or level of cover of the proposed insurance to be provided under paragraph 3(7) then they shall be entitled to refer the matter to an expert for determination under paragraph 19 and the undertaker must not exercise the relevant identified power(s) until that determination has been provided.

(11) Nothing in this Part of the Schedule shall apply to apparatus in respect of which the relations between the undertaker and an owner are regulated by the provisions of Part 3 of the 1991 Act.

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, that apparatus must not be removed and any right to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to the owner or operator of the apparatus.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the owner or operator in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case the undertaker must afford to the owner the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed

between the owner or operator in question and the undertaker or in default of agreement settled by a person appointed under paragraph19.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an expert in accordance with paragraph 19, and after the grant to the owner of any such facilities and rights as are referred to in sub-paragraph (2), and also after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the owner or operator, shall be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) In the event that works are executed by the undertaker in accordance with sub-paragraph (5) the owner or operator of the apparatus must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3,000 millimetres of the apparatus without the written agreement of the owner or operator such agreement not to be unreasonably withheld.

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an owner or operator facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the owner or operator in question or in default of agreement determined by an expert in accordance with paragraph 19 such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorise development, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised project and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to and be no less favourable as a whole than the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the expert must make such provision for the payment of compensation by the undertaker to that owner or operator as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

6.—(1) Not less than 30 days before starting the execution of any works of the type referred to in paragraph 4(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), and in all cases where such works are within 3,000 millimetres of any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), the undertaker must submit to the owner or operator in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may

be made in accordance with sub-paragraph (3) by the owner or operator for the alteration or otherwise for the temporary or permanent protection of the apparatus, or for securing access to it, and the owner or operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of those works.

(3) Any requirements made by an owner or operator under sub-paragraph (2) must (except in circumstances where the same reasonably arise from the owners or operators watching, monitoring and inspection of those works) be made within a period of 30 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it and where the works relate to the installation or construction of the authorised project such requirements may require the protective measures referred to in sub-paragraph (2) to be retained in place at any time that the authorised project is installed.

(4) If an owner or operator in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 3 to 7 must apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan, section and description.

(6) On the reasonable and evidenced request of an owner or operator affected by proposed works the undertaker shall extend the periods in this paragraph by a reasonable time.

(7) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall undertake those works in such manner as has regard to the potential lack of suitable temporary or permanent protection of the owner's or operator's apparatus and must give to the owner or operator in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an owner or operator the reasonable expenses incurred by that owner or operator in, or in connection with—

(a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part of this Schedule;

(b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;

(c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;

(d) the design, project management, supervision and implementation of works;

(e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;

(f) monitoring the effectiveness of any protective measures referred to in paragraph 6(3) and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those protective measures; and

(g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any such power or by the service by the undertaker of any notice, plan, section or description, within a reasonable time of being notified by the owner that it has incurred such expenses.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an expert in accordance with paragraph 19 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (3) regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(5) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to an owner or operator in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on the owner or operator by deferment of the time for renewal of the apparatus in the ordinary course of that owner's business practice, be reduced by the amount which represents that benefit.

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised project and any such works referred to in paragraph 4(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an owner or operator, or there is any interruption in any service provided by or operations of the owner or operator, the undertaker must—

(a) bear and pay the cost reasonably incurred by that owner or operator in making good such damage or restoring the supply and operations; and

(b) make compensation to that owner or operator and any other person whose supply or operations are affected by the interruption for any other expenses, loss, damages, penalty or costs incurred by them,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an owner or operator, its officers, servants, contractors or agents.

(3) An owner or operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of any claim made against the owner or operator by any third party shall be made without the consent of the undertaker which, if it withholds such

consent, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

9.—(1) The undertaker must not in the exercise of the powers conferred by this Order unreasonably delay or prevent the construction, installation, adjustment, alteration, operation, use, repair, maintenance, renewal, inspection, removal or replacement of apparatus in the Wilton Land.

(2) If an owner or operator considers that the undertaker is in breach of paragraph (1) it may refer the matter to an expert for determination pursuant to paragraph 19.

10.—(1) Subject to sub-paragraph (2) the undertaker will afford to owners of the Wilton Land rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of apparatus in the Wilton Land acquired by the undertaker or affecting the rights of, or permitted under the rights acquired by, the undertaker granted upon such terms and conditions to be materially no worse than the terms and conditions that apply to similar apparatus affecting the authorised works as may be agreed between the undertaker and the person wishing to construct, adjust, alter, use, repair, maintain, renew, inspect, remove and replace apparatus in question or in default of agreement determined by an expert in accordance with paragraph 19.

(2) In settling the terms and conditions of any grant of rights regard shall be had to the terms and conditions applicable from time to time to the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and/or replacement of other apparatus within the Wilton Complex.

11.—(1) Before carrying out any construction works affecting access rights over the Wilton Site Roads, the undertaker must prepare a draft construction access plan and, publicise and consult upon this draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the construction access plan.

(3) No works affecting access rights over the Wilton Site Roads shall commence until thirty days after the approved construction access plan has been served on owners and operators in the Wilton Complex.

12.—(1) Before carrying out any maintenance works affecting access rights over the Wilton Complex, the undertaker must prepare a draft maintenance access plan and, publicise and consult upon this draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the maintenance access plan.

(3) No works affecting access rights shall commence until thirty days after the approved construction access plan has been served on owners and operators in the Wilton Complex

13.—(1) In preparing a construction access plan pursuant to paragraph 11 or a maintenance access plan pursuant to paragraph 12 the undertaker shall—

(a) establish the programme for any other major works within the Wilton Complex and shall programme the construction or maintenance of the authorised project to prevent (or, if such conflict cannot be reasonable prevented, to minimise) any conflict between the construction or maintenance of the authorised project and the programmed major works; and

(b) establish where an owner or operator has a reasonable expectation to exercise access rights over particular Wilton Site Roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby it can be met.

(2) For the purposes of this paragraph “programmed” means that the owner of the Wilton Site Roads has been notified of the dates between which works are programmed to be carried out.

(3) In exercising any right of access over the Wilton Site Roads, the undertaker must repay to the owner the reasonable expenses incurred by that owner in operating, repairing, maintaining, renewing, inspecting and replacing that Wilton Site Road together with any perimeter

gatehouses and other security serving the Wilton Complex having regard to user within a reasonable time of being notified by the owner that it has incurred such expenses.

(4) On the reasonable and evidenced request of an owner or operator in the Wilton Complex affected by proposed works the undertaker shall extend the periods in this paragraph by a reasonable time.

(5) Where a reference is made to expert determination in accordance with paragraph 19 in relation to any disagreement about a construction access plan the appointed person shall have regard to—

(a) whether major works were, at the date of the consultation already programmed to take place;

(b) the extent to which the authorised project can be accommodated simultaneously with the programmed major works;

(c) the usual practice in respect of conditions or requirements subject to which authorisation is given by the owner of the Wilton Site Road;

(d) the undertaker's programme in respect of the authorised project and the extent to which it is reasonable for it to carry out the authorised project at a different time;

(e) the availability (or non-availability) of other times during which the authorised project could be carried out;

(f) the programme in respect of the major works and the extent to which it is reasonable for the owner or operator at the Wilton Complex to carry out the major works at a different time; and

(g) the financial consequences of the decision on the undertaker and on any owner and operator in the Wilton Complex.

14. Before undertaking any work in the Wilton Land or exercising any rights relating to or affecting the Wilton Land the undertaker will consult with the owners of the Wilton Land.

15. Before undertaking any works in the Wilton Land or exercising any identified powers relating to or affecting owners or operators in the Wilton Complex the undertaker will participate in any relevant consultation groups operated in the Wilton Complex.

16. Before undertaking any construction works on the Wilton Land or commencing the operation of Schedule 1 Part 1 Work No 7 where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Wilton Land in terms of—

(a) construction or operational noise and vibration management;

(b) air quality including dust emissions;

(c) waste management;

(d) traffic management and materials storage on site;

(e) water management (surface water and groundwater); or

(f) artificial light emissions—

the undertaker will participate in any relevant community environmental liaison group that might from time to time be established between the owners or operators at the Wilton Complex and local residents.

17.—(1) Subject to sub-paragraph (2) in undertaking any works in the Wilton Land or exercising any rights relating to or affecting owners and operators in the Wilton Complex the undertaker will comply with such conditions, requirements or regulations relating to the health, safety, security and welfare as are operated in relation to access to or activities within the Wilton Complex.

(2) In carrying out any works as part of the authorised project the undertaker will not be bound by any condition, requirement or regulation that is—

(a) introduced after the date on which notice of those works was given unless its introduction is by way of legislation or policy emanating from the government, any relevant government agency, local government or the Police; or

(b) determined by the expert following a determination under paragraph 19 to—

(i) create significant engineering, technical or programming difficulties; or

(ii) materially increase the cost of carrying out those works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation arises as a consequence of a direction from a police or government authority.

18. The undertaker will co-operate with the owners and operators in the Wilton Complex to respond promptly to any complaints raised in relation to the construction or operation of the undertaker's authorised project within the Wilton Complex or the traffic associated with the authorised project.

19.—(1) Except as provided for in sub-clause (7) below, the provisions of article 44 do not apply to this Part.

(2) Any difference under this Part may be referred to and settled by a single independent and suitable person acting as an expert holding appropriate professional qualifications and being a member of a professional body relevant to the matter in dispute, such person to be agreed between the differing parties or failing agreement identified on the application of either party, with notice to the other, by the local authority.

(3) All parties involved in settling any difference must use best endeavours to do so within a maximum of 60 days from the date of an expert first being proposed.

(4) The fees of the expert shall be shared between the differing parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the differing parties to make submission to the expert in writing in a specified period;

(b) permit the differing parties to make comments on the submissions made by the other party;

(c) give reasons for their decision

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;

(e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost effective manner;

(f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

(g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;

(h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(i) any other important and relevant consideration.

(7) Any determination shall be final and binding save where manifest effort is found in which case the difference which has been subject to expert determination may be referred to and settled by arbitration under article 44.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of two generating stations in the sea between 125 kilometres and 290 kilometres off the UK coast together with all necessary and associated development. For the purposes of the development this Order authorises the compulsory purchase of land and rights in land and rights to use land as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the generating stations and associated development. The deemed marine licences impose requirements in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 42 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Redcar and Cleveland Borough Council, Redcar & Cleveland House, Kirkleatham Street, Redcar, TS10 1RT.

APPENDIX B: DOCUMENT LIBRARY

An electronic copy of the Dogger Bank Teesside A&B Document Library can be viewed by clicking on the hyperlink.

APPENDIX C: REPORT ON THE IMPACT ON EUROPEAN SITES (RIES)

An electronic copy of the Report on the Implications for European Sites (RIES) can be viewed by clicking on the hyperlink.

APPENDIX D: EVENTS IN THE EXAMINATION

The Approved Examination Timetable

The Panel's examination of the application takes the form of consideration of written representations about the application. The Panel will also consider any oral representations made at the hearings. The Panel is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the preliminary meeting.

Item	Matters	Due Dates
1.	**Preliminary Meeting**	**Tuesday 5 August 2014**
2.	Issue by the Panel of: • the examination timetable. Publication of the Panel's first written questions (ExQ1).	**Monday 11 August 2014**
3.	**DEADLINE I** Deadline for receipt of: • Statements of Representation from 'other persons' who have not made a relevant representation but who the Panel has agreed can participate in the examination; and • letters proposing the arrangements necessary for accompanied site inspections at Cleveland Potash Boulby mine, Sembcorp Utilities Wilton site and a site of geological interest on the foreshore between Redcar and Marske.	**Friday 22 August 2014 at 2pm**
4.	**DEADLINE II** Deadline for receipt of: • Statements of Common Ground (SoCGs) requested by the Panel; and • Local Impact Reports (LIRs).	**Thursday 28 August 2014 at 2pm**
5.	**DEADLINE III**	**Wednesday 3 September 2014**

Item	Matters	Due Dates
	Deadline for receipt of: • comments on relevant representations (RRs); • summaries of all RRs exceeding 1500 words; • written representations (WRs) by all interested parties (including comments on documents apparently missing from the application); • summaries of all WRs exceeding 1500 words; • responses to Panel's first written questions (ExQ1); • a list of commercial agreements and planning obligations proposed by the applicant and a summary of their parties, purpose and content; • notice of wish to be heard at an Open-floor hearing; • notice of wish to be heard at Issue-specific hearings; • notice of wish to be heard at a Compulsory Acquisition hearing; • nominations of locations to be inspected during unaccompanied site inspections, the features to be observed there and the reasons for each nomination; • nominations of locations to be inspected during accompanied site inspections, the features to be observed there and the reasons for each nomination; • the 'master index' provided for in Procedural Decision Annex C(i); and • an updated draft Development Consent Order if any changes are proposed, with reasons for changes.	**at 2pm**
6.	Issue by the Panel of notification of date, time and place for: • Issue-specific hearings; • Open-floor hearings;	**Tuesday 16 September 2014**

Item	Matters	Due Dates
	• Compulsory Acquisition hearings; and • any accompanied site inspections;	
7.	**DEADLINE IV** Deadline for receipt by the Panel of: • responses to comments on RRs; • comments on WRs; • comments on responses to first written questions (ExQ1); • applicant's revised screening and integrity matrices; • comments on LIRs; • comments on Statements of Representation; • any submissions of evidence, statements of clarification or revisions to Statements of Common Ground, anticipated as being required to support participation in hearings at items 9, 10 and 11 below; • requests to attend any accompanied site inspections; • an updated 'master index' provided for in Procedural Decision Annex C(i); and • an updated draft Development Consent Order if any changes are proposed, with reasons for changes.	**Tuesday 23 September 2014 at 2pm**
8.	Publication by the Panel of: • agendas for hearings at items 9, 10 and 11 below; and • final details of accompanied site inspections.	**On or around Monday 6 October 2014**
8A.	Submission by the applicant of: • Answers to written questions to the applicant under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 issued on 1 October 2014.	**Wednesday 8 October 2014 at 2pm**
9.	Time was reserved for **Open-floor**	**Monday 13**

Item	Matters	Due Dates
	Hearing (none was required)	**October 2014** **Evening session 6.00pm – 9.00pm**
10.	**Issue-specific Hearings** relating to: • biodiversity effects; • Habitat Regulations Assessment; • fisheries resource sustainability; • geological effects; and • other natural environment considerations.	**Tuesday 14 – Wednesday 15 October 2014**
11.	**Issue-specific Hearing** relating to: • high level review of the Draft Development Consent Order.	**Thursday 16** - **October 2014 Friday 17 October 2014**
12.	**Accompanied Site Inspection 1**	**Wednesday 15 October 2014**
13.	Time reserved for **Accompanied Site Inspections** (not used)	**Tuesday 21 October 2014**
14.	**DEADLINE V** Deadline for receipt by the Panel of: • post hearing documents arising from hearings at items 9, 10 and 11 above including written summaries of any oral case put, of any evidence and any documents or amendments requested by the Panel; • preparatory submissions of evidence, statements of clarification or revisions to Statements of Common Ground, anticipated as being required to support participation in hearings at items 17, 18 and 19 below; • applicant's revised draft DCO taking issues raised and comments into account;	**Thursday 23 October 2014 at 2pm**

Item	Matters	Due Dates
	• responses to comments on WRs; • responses to comments on responses to first written questions (ExQ1); • comments on applicant's revised screening and integrity matrices; • responses to comments on Local Impact Reports (LIRs); • responses to comments on Statements of Representation; and • the 'master index' provided for in Procedural Decision Annex C(i).	
15.	Publication by the Panel of: • second written questions (ExQ2)	**Tuesday 28 October 2014**
16.	Publication by the Panel of: • agendas for hearings at items 17, 18 and 19 below.	**Tuesday 4 November 2014**
17.	**Issue-specific Hearings** relating to: • onshore physical impacts relating to construction, operation and/or decommissioning; • onshore social and economic impacts, including but not limited to effects of the application proposal on other employment land uses, other infrastructure projects and mineral extraction; • onshore traffic and transportation impacts; • offshore physical impacts relating to construction, operation and/or decommissioning; • offshore social and economic impacts, including but not limited to effects on the fishing industry; • any effects of existing and/or proposed land or sea uses on the application proposal and of the application proposal on existing and/or proposed land or sea	**Tuesday 11 – Wednesday 12 November 2014**

Item	Matters	Due Dates
	uses; and • natural environment and/or Habitat Regulations Assessment issues arising from timetable item 10 (if required).	
18.	**Open-floor Hearing**	**Tuesday 11 November 2014** **Evening session 6.00pm – 9.00pm**
19.	**Compulsory Acquisition Hearing**	**Thursday 13 November 2014**
20.	**Accompanied Site Inspections 2 and 3**	**Tuesday 11 and Thursday 13 November 2014**
21.	**DEADLINE VI** Deadline for receipt by the Panel of: • post hearing documents arising from hearings at items 17, 18 and 19 above including written summaries of any oral cases put, of evidence and of any documents or amendments requested by the Panel; • preparatory submissions of evidence, statements of clarification or revisions to Statements of Common Ground, anticipated as being required to support participation in hearings at items 23, 24 and 25 below; • applicant's revised draft DCO taking issues raised and comments into account; • responses to the Panel's second written questions (if issued) (ExQ2); • responses to comments on applicants revised screening and integrity matrices; and • the 'master index' provided for in Procedural Decision Annex C(i). Submission by the applicant of:	**Thursday 20 November 2014 at 2pm**

Item	Matters	Due Dates
	• Proof of notice and copies of all responses to additional consultation on the application changes proposed at Deadline IV. • Proof of notice and copies of all responses to the supplementary environmental information provided at Deadline IV. Submission by any person who is by that time an interested party or invited person of: • written representations in respect of the application changes proposed and the supplementary environmental information provided at Deadline IV; • responses to answers to questions by the applicant provided at timetable item 8A; and • additional requests to be heard at the Compulsory Acquisition Hearing 2 on Thursday 4 December 2014.	
22.	Publication by the Panel of: • agendas for hearings at items 23, 24 and 25 below. • Decisions in respect of the materiality and acceptance of the application changes proposed at Deadline IV.	**Tuesday 25 November 2014 at 2pm**
22A.	Subject to the Panel's decisions at timetable item 22, submission by the applicant of: • Responses to written representations relevant to changes to the application or supplementary environmental information submitted at Deadline IV. Issue by the Panel of: • written additional questions to Scottish Natural Heritage and Marine Scotland.	**Monday 1 December 2014 at 2pm**

Item	Matters	Due Dates
23.	**Issue-specific Hearings** relating to: • natural environment issues; • Habitat Regulations Assessment; and • other matters remaining to be addressed from earlier hearings.	**Tuesday 2 and Wednesday 3 December 2014**
24.	**Issue-specific Hearing** relating to: • detailed review of the Draft Development Consent Order.	**Tuesday 2 and Wednesday 3 December 2014**
25.	**Compulsory Acquisition Hearing** and **Accompanied Site Inspection 4**	**Thursday 4 December 2014**
26.	**DEADLINE VII** Deadline for receipt by the Panel of: • comments on responses to the Panel's second written questions (if issued) (ExQ2). • post hearing documents arising from hearings at items 23, 24 and 25 above, including written summaries of any oral cases put, of evidence and of any documents or amendments requested by the Panel; • applicant's revised draft DCO taking issues raised and comments into account; • any planning obligations or related agreements which the applicant wishes to be considered by the Secretary of State; • evidence of the conclusion and relevant terms of any commercial agreements which the applicant wishes the Secretary of State to take into account; and • the 'master index' provided for in Procedural Decision Annex C(i).	**Thursday 11 December 2014 at 2pm**

Item	Matters	Due Dates
	• answers to additional questions issued at timetable item 22A.	
27.	Publication by the Panel of: • a Report on the Implications for European Sites (RIES) taking issues raised and comments into account.	**Friday 19 December 2014**
28.	Publication by the Panel of: • the Panel's revised draft DCO taking issues raised and comments into account.	**Tuesday 23 December 2014**
28A.	Submission of: • preparatory submissions of statements of case, evidence, statements of clarification or revisions to Statements of Common Ground, anticipated as being required to support participation in the further Compulsory Acquisition Hearing at item 28B below.	**Monday 29 December 2014 at 2pm**
28B.	**Compulsory Acquisition Hearing** • intended to enable the completion of business originally intended to be undertaken at Compulsory Acquisition Hearing 2 on 4 December 2014.	**Tuesday 13 January 2015**
28C.	**Accompanied Site Inspection 5** • intended to enable the completion of inspections originally intended to be held on 4 December 2014.	**Wednesday 14 January 2015**
29.	**DEADLINE VIII** Deadline for receipt of: • comments on the Panel's revised draft DCO • comments on any proposed planning obligations and/or commercial agreements; and	**Monday 19 January 2015 at 2pm**

Item	Matters	Due Dates
	• comments on the RIES. • responses to answers to additional questions issued at timetable item 22A (if any). • post hearing documents arising from hearings at item 28B above including written summaries of any oral cases put, of evidence and of any documents or amendments requested by the Panel.	
30.	Issue by the Panel of: • further information requests under Rule 17 and final written questions.	**Wednesday 21 January 2015**
31.	**DEADLINE IX** Deadline for receipt of: • responses to documents submitted at item 29; and • responses to any further information as requested at item 30 (if any submissions were required).	**Tuesday 27 January 2015**
31A.	Issue by the Panel of: • written additional questions to the applicant, Northern Powergrid (North East) Ltd, SABIC UK Petrochemicals Ltd, Sembcorp Utilities (UK) Ltd and National Grid Electricity Transmission.	**Thursday 29 January 2015**
32.	**DEADLINE X** Deadline for receipt of: • comments on responses in relation to any further information requested at item 30 (if any responses were submitted). Submission of: • answers to additional questions issued at timetable item 31A.	**Monday 2 February 2015**

Item	Matters	Due Dates
32A.	**DEADLINE XI** Submission of: • responses to answers to additional questions issued at timetable item 31A.	**Wednesday 4 February 2015 at 4pm**
33.	Close of Examination	**Thursday 5 February 2015 at 2pm**

APPENDIX E: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
AONB	Area of Outstanding Natural Beauty
APFP regulations	Applications: Prescribed Forms and Procedures
CA	Compulsory Acquisition
CAA	Civil Aviation Authority
CDM	Construction (Design and Management)
Cefas	Centre for Environment, Fisheries and Aquaculture Science
CIA	Cumulative Impact Assessment
CPO	Compulsory purchase order, not made under the Planning Act 2008
CRA	Collision Risk Assessment
CRM	Collision Risk Model
cSAC	candidate Special Area of Conservation
CUSC	Connection and Use of System Code
DCLG	Department for Communities and Local Government
DCLG compulsory acquisition guidance	'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land', Department of Communities and Local Government, September 2013
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DML	Deemed Marine Licence
EA	Environment Agency
EEZ	Exclusive Economic Zone
EH	English Heritage
EIA	Environmental Impact Assessment
EMF	Electro Magnetic Field
EPR	Examination Procedure Rules
ERCOP	Emergency Response Co-operation Plan
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
GES	Good Environmental Status
GW	Gigawatt
HDD	Horizontal Directional Drilling
HPA	Health Protection Agency
HRA	Habitat Regulations Assessment
HSC	Historic Seascape Characterisation
HSE	Health and Safety Executive
IPMP	In Principle Monitoring Plan
ISH	Issue Specific Hearing

Abbreviation or usage	Reference
JNCC	Joint Nature Conservation Committee
LA	Local Authority
LAT	Lowest Astronomical Tide
LBBG	Lesser Black-backed Gull
LDF	Local Development Framework
LIR	Local Impact Report
LPA	Local Planning Authority
MACAA2009	Marine and Coastal Access Act 2009
MCA	Maritime and Coastguard Agency
MCZ	Marine Conservation Zone
MHWS	Mean High Water Springs
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MoD	Ministry of Defence
MPS	Marine Policy Statement
MW	Megawatt
NE	Natural England
NERCA2006	The Natural Environment and Rural Communities Act
NFFO	National Federation of Fishermen's Organisations
NGET	National Grid Electricity Transmission
nm	Nautical Miles
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NRA	Navigation Risk Assessment
OFCOM	The independent regulator and competition authority for UK communications industries
OFGEM	The independent regulator and competition authority for UK gas and electricity markets
OFTO	Offshore Transmission Operator
PA2008	Planning Act 2008
PVA	Population Viability Analysis
Ramsar	The Ramsar Convention on Wetlands
RES	Renewable Energy Sources
REWS	Radar Early Warning System
REZ	Renewable Energy Zone
RIES	Report on the Implications for European Sites
RSPB	Royal Society for the Protection of Birds
RYA	Royal Yachting Association
SAC	Special Area of Conservation
SNCB	Statutory Nature Conservation Body
SNCBs	Statutory Nature Conservation Bodies – a collective reference
SOCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest

Abbreviation or usage	Reference
SLVIA	Seascape, Landscape and Visual Impact Assessment
TB	Transboundary
TEC	Transmission Entry Capacity
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VER	Valued Ecological Receptors
ZTV	Zone of theoretical visibility