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Dear Ms Thompson

**PLANNING ACT 2008**

**APPLICATION FOR THE PROPOSED EAST ANGLIA ONE OFFSHORE WIND FARM  
ORDER**

**1. Introduction**

- 1.1 I am directed by the Secretary of State for Energy and Climate Change (“the Secretary of State”) to advise you that consideration has been given to the report of the Panel of four Examining Inspectors (Gideon Amos, Jim Claydon, Wendy McKay and Andrew Mead) (“the Panel”) appointed by the Secretary of State for Communities and Local Government under section 65 of the Planning Act 2008 (“the 2008 Act”) as the Examining Authority (“the ExA”) for the application (“the Application”) dated 8 November 2012 by East Anglia One Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the 2008 Act.
- 1.2 The examination (“the Examination”) of the Application by the Panel began on 26 June 2013 and was completed on 23 December 2013. The Examination was conducted on the basis of written evidence submitted to the Panel and was discussed at hearings held in Ipswich on 12 (open floor – held at the Corn Exchange, Town Hall, Ipswich), 17, 18, 19 (at Novotel, Ipswich), 24 (Corn Exchange), 25 and 26 September 2013 (Novotel, Ipswich) (issue specific) and 8 October 2013 (Trinity Park, Ipswich)(compulsory acquisition).
- 1.3 The Order, as applied for, would grant development consent for the construction and operation of an offshore wind farm to be situated approximately 43.4km from the Suffolk coast with a gross electrical output capacity of up to 1200MW, consisting of up to 325

turbines situated within the UK's Renewable Energy Zone, cabling to connect the turbines to a number of offshore converter/collector stations, cabling to connect the converter stations to the shore at Bawdsey in Suffolk, underground cabling and ducting from Bawdsey to a new onshore converter station at Bramford, also in Suffolk and underground cabling between the Bramford converter station and an adjacent National Grid sub-station. In addition, the Order includes provision, as "associated development", for the installation of ducting that would be used for cabling linked to the proposed East Anglia 3 and East Anglia 4 offshore wind farm projects in the event that they receive the necessary development consents. The Order also includes provisions for the compulsory acquisition of land necessary for the project and protective provisions for a number of statutory undertakers and other organisations.

- 1.4 Enclosed at Annex A to this letter is a copy of the Panel's Report and annexed Errata Sheet (Ref: EN 10025). References in this letter to "the Report" are to the Panel's Report subject to these corrections. The Panel's findings and conclusions are set out in sections 4 and 5 of the Report and its recommendation is at section 6.

## **2. Summary of the Panel's Report and Recommendations**

- 2.1 The Panel's report included their findings and conclusions on the following principal issues:

- i. Associated Development;
- ii. Biodiversity: European Sites and the Habitats Regulations;
- iii. Biodiversity: other protected sites and habitats;
- iv. Fisheries;
- v. Marine and coastal physical processes;
- vi. Noise, vibration, electro-magnetic fields and health;
- vii. Operational and navigational safety;
- viii. Offshore and onshore heritage and the built environment;
- ix. Landscape, visual impact and good design;
- x. Highways and traffic;
- xi. Drainage and water supply; and
- xii. Socio-economic impacts.

- 2.2 The Panel's recommendation (ER 6.5) is as follows:

"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 this Report, the Panel recommends the Secretary of State for Energy and Climate Change, once a s106 agreement is signed as detailed in Chapter 4 above, to make the East Anglia One Offshore Wind Farm Order in the recommended form appended."

## **3. Secretary of State's decision on the Application**

- 3.1 The Secretary of State notes that the s106 agreement mentioned above has been signed and has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in the Application. A copy of the Order is

attached at Annex B and the Habitats Regulation Assessment is attached at Annex C.

- 3.2 The Secretary of State's consideration of the Panel's Report and of representations received and not withdrawn in respect of the Application is set out in the following paragraphs. His consideration of representations received after close of the Examination is also set out below. All paragraph references, unless otherwise stated are to the Panel's Report ("ER") and references to Requirements and Deemed Marine Licence ("DML") conditions are to those in Part 2 of Schedule A and Schedules I and J respectively.
- 3.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the Panel as set out in its Report. This letter should, therefore, be read with Annexes A, B and C. This letter with the enclosed Annexes constitutes both the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").
- 3.4 In reaching this decision, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with Energy National Policy Statements EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure) and EN-5 (NPS for Electricity Networks Infrastructure) which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant and would also be in accordance with the Marine Policy Statement and relevant emerging marine policy.
- 3.5 The Panel considered relevant and important policies in respect of the United Kingdom's international obligations as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) and the Conservation of Habitats and Species (Amendment) Regulations 2012 ("the Habitats Regulations") which transpose Council Directive 92/43/EC on the Conservation of Habitats and Species and of Wild Flora and Fauna ("the Habitats Directive") into UK law as far as the 12 nautical mile limit of territorial Waters; and in the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007 (as amended) and the Offshore Marine Conservation (Natural Habitats &c) (Amendment) Regulations 2012 ("the Offshore Regulations") which do so beyond territorial waters in the UK's offshore marine area. The Habitats Directive provides for the designation of sites for the protection of habitats and species of European importance called Special Areas of Conservation and the Birds Directive for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species, called Special Protection Areas ("SPAs") – collectively known as "European sites". The Secretary of State has taken these issues into account in assessing potential adverse impacts.
- 3.6 The Panel also considered in their Report the impacts of the Development in relation to the Renewable Energy Directive 2009, noting that the UK Renewable Energy Strategy 2009 sets out how the UK proposes to meet the target for renewable energy set out in the Directive, the Water Framework Directive, the European Strategy Framework Directive, the National Parks and Access to the Countryside Act 1949, the Wildlife and

Countryside Act 1981, the Countryside and Rights of Way Act 2000 and the National Environment and Rural Communities Act 2006.

3.7 The Secretary of State has also had regard to the joint Local Impact Report submitted by Suffolk County Council, Suffolk Coastal District Council and Mid-Suffolk District Council and to relevant local plans as well as to the environmental information as defined in regulation 2(1) of the 2009 Regulations and to all other matters which he considers to be important and relevant to his decision as required by section 104 of the 2008 Act. In making his decision under the 2008 Act, the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to his decision.

#### 4. **Secretary of State`s consideration of the Application**

4.1 The Secretary of State has carefully considered the Report, the representations made known to him in respect of the Application and all other material considerations. The Secretary of State`s consideration of the Report is set out in the following paragraphs.

4.2 At the final stage of the Examination, the Applicant submitted a written representation (REP 342) stating that it had made sufficient progress with its procurement activities to be able to reduce the number of wind turbines proposed in the draft Order from a maximum of 325 to 240, thereby reducing the size of the Rochdale Envelope required. The Panel found that the representation fell short of proposing such a change and that such a change was not necessary (ER 2.32, 4.129 – 4.138). The Panel recommended against any reduction in the generating capacity of the Development, in the light of the need case for all types of energy infrastructure as set out in the Overarching National Policy Statement for Energy (NPS EN-1). The Panel recognised the environmental benefits of the proposed turbine reduction on bird species and balanced these against the disadvantages of reducing the energy generating capacity of the Development. Given this balance and the lateness in the examination of the arrival of the offer, the Panel placed little weight on it as a potential revision to the Application.

4.3 In response to a representation submitted by the Applicant at the final stage of the Examination (ER 4.129), the Secretary of State in a letter dated 8 April 2014 sought comments from the interested parties on the potential implications of a reduction in the number of wind turbines from 325 to 240 (ER 4.138). His consideration of the representations received after the close of the examination on 23 December 2013 is set out at paragraphs 6.1 – 6.3 below. Based on the responses received, the Secretary of State concludes that a reduction in turbine numbers would not necessarily lead to a reduction in overall capacity. He also notes that the operation of fewer, larger, turbines (each with a minimum capacity of 5MW) will reduce the predicted collision mortality levels for a number of bird species (see paragraphs 4.10 and 8.5 below).

##### (i) Associated Development

4.4 The principal issue in relation to associated development arising from the Application (ER 4.6) was whether the additional ducts proposed for future offshore wind farms off the Suffolk coast – East Anglia Three and East Anglia Four – could be considered associated

development under s115 of the 2008 Act. The Panel found that the ducts for those future wind farms were associated development and not excluded by any part of section 115 of the 2008 Act (ER 4.7) and considered the application of Principle 5(iv) in the revised Department of Communities and Local Government guidance on Associated Development (ER 4.8). Having examined the case made by the Applicant for the inclusion of ducting for future projects (ER 4.9 – 4.16), the Panel concludes (ER 4.17) that the connection between the East Anglia One project and the laying of the ducting for East Anglia Three and Four can be regarded as development which is associated with the proposed East Anglia One wind farm. The Secretary of State agrees with the analysis and the conclusion reached.

(ii) Biodiversity: European Sites and the Habitats Regulations

- 4.5. The Secretary of State notes that the Panel considered a number of issues under the above heading.
- 4.6. During the Examination, concerns were expressed about the potential impact and effects of the proposed East Anglia One wind farm on protected sites and species of seabirds (ER 4.41 – 4.42) were considered. The parties submitted new and additional information, including the preparation of a new Habitats Regulation Assessment (HRA) report by the Applicant. The Panel with support from officials in the Planning Inspectorate produced a Report on the Implications for European Sites (RIES) compiled from relevant materials throughout the Examination. The Secretary of State as the competent authority for the purposes of regulation 25 of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007 (as amended) (“the Offshore Habitats Regulations”) is required to consider whether the proposed development, either alone or in combination with other plans and projects would have a likely significant effect on European Sites. If such an effect is likely, then he must undertake an Appropriate Assessment (“AA”) addressing the implications for the European Site in view of its conservation objectives. The RIES identified the European Sites which could experience significant effects from the proposed East Anglia One project and the main issues considered under the HRA process (ER 4.53 – 4.61). It was concluded that the likely significant effects on features of three European Sites could not be excluded and so an AA under the Offshore Habitats Regulations is required.
- 4.7. In its assessment of potential impacts on bird species, the Panel determined (ER 4.137) that with 325 turbines – the worst case scenario for bird impacts – the proposed East Anglia One wind farm alone and in-combination with all consented and built wind farms considered by the Applicant would not have an adverse impact on kittiwakes and gannets at the Flamborough Head and Bempton Cliffs SPA. This conclusion also applies to the Flamborough Head and Filey Cliffs potential (p)SPA. In its assessment of impacts on the lesser black backed gull population at the Alde-Ore Estuary SPA, the Panel took the view that the effect of the East Anglia One wind farm on the Alde-Ore Estuary SPA in terms of collision risk will be insignificant when compared to other factors (ER 4.73).
- 4.8. The Panel’s consideration of gannet impacts looked at what constituted an appropriate avoidance rate for the species (that is, the percentage of birds that would avoid a wind turbine (ER 4.89 – 4.92). The avoidance rate has a direct impact on the modelling of

bird mortality figures.). The Royal Society for the Protection of Birds (“RSPB”) considered that an avoidance rate of 98% should be utilised, while the Applicant’s conclusion, based on monitoring studies at operational wind farms, was that an avoidance rate of 99% was more realistic. The RSPB argued that there was insufficient evidence to support the use of a 99% avoidance rate. Natural England advised that a 98% avoidance rate “may be considered precautionary for gannet”. Having weighed up the evidence, the Panel considered that 99% was a more realistic figure (ER 4.92). This is significant as a 1% increase in avoidance rate has the effect of halving the predicted collision mortalities. The Secretary of State agrees with the Panel and has used a 99% avoidance rate for gannet in his AA.

- 4.9 As required by the Offshore Habitats Regulations, officials in DECC have undertaken an AA on behalf of the Secretary of State to determine whether, using the best scientific evidence available, adverse effects on the integrity of European Sites can be ruled out either alone or in combination with relevant plans or projects.
- 4.10 The AA was carried out largely using information supplied in the assessment for a 325 turbine project as set out in the original Application, with collision estimates shown for the reduced 240 turbine project where available. Therefore, the assessment upon which the Panel relied can be considered to be very precautionary in relation to an Order which is based on a 240 turbine configuration.
- 4.11 For lesser black backed gulls at the Alde-Ore Estuary SPA, the Secretary of State’s AA notes that Natural England and the Joint Nature Conservation Committee (“JNCC”) were concerned about the in-combination impact of East Anglia One when considered with other offshore wind farms – both current and proposed – which would result in an annual mortality of 249 lesser black backed gulls, although, as indicated, only a small number of them are attributed to the East Anglia One project itself. However, the Secretary of State agrees with the Panel’s (ER 4.73) and SNCB’s (ER 4.73) position that the number of predicted collisions that can be attributed to East Anglia One is so small as to not materially alter the overall in-combination mortality figure or the likelihood of an adverse effect on the SPA. The AA also highlights that a variety of factors, such as food availability and threats at the SPA breeding colony which are currently being addressed by Natural England and its partners, have far greater effects on the gull population. The Secretary of State also notes that his AA for the Galloper offshore wind farm concluded no adverse effect on lesser black backed gull for that project in combination with other offshore wind projects, provided that all predicted collisions from Galloper were mitigated. Given the factors above, he is confident in concluding that there will be no adverse impact as a result of the project alone and in combination on the Alde-Ore Estuary SPA.
- 4.12 For kittiwakes (using a 98% avoidance rate) and gannets (using 99% as set out above), the evidence presented indicates that there is no adverse effect on the integrity of the Flamborough Head and Bempton Cliffs SPA either alone or in-combination with other consented or built projects in the North Sea. This conclusion applies equally for those features of the Flamborough Head and Filey Cliffs pSPA (into which the existing Flamborough Head and Bempton Cliffs SPA will be subsumed).
- 4.13 The HRA also considers the potential impacts of the Development on auk species

(guillemots and razorbills) that are new interest features of the (p)SPA. It concludes there will be no likely significant effect on guillemots and razorbills at the SPA due to displacement from the Development alone. The effects are so small as to not materially alter any in-combination mortality figure or the likelihood of an adverse effect on the pSPA. The Applicant and the JNCC agreed that the wind farm on its own was not likely to have a significant effect on auk species. Subsequently, the Applicant produced a paper which set out that the Development would not, either alone or in-combination have a significant effect on auks in the North Sea. The JNCC did not challenge the conclusions and the Panel saw no reason to disagree with them (ER 4.150).

4.14 In taking his decision on applications for development consent, the Secretary of State, as competent authority is required to consider “reasonably foreseeable” plans and projects in order to ascertain that any application will not have an effect on the integrity of any European site either alone or in combination with other plans and projects. There are a number of other offshore wind farms in the planning system that could have a likely significant effect on the same species as East Anglia One.

4.15 The Secretary of State notes that to assist with providing a framework for in-combination assessments, the Statutory Nature Conservation Bodies suggested an approach that involved placing wind farm projects into tiers according to their stage in the planning process. The earlier a stage the project is at, the greater the uncertainty associated with the data and the assessment. The later the stage, then the more reliable the data can be considered to be. Whilst this is a helpful framework to illustrate the potential impacts of future projects, the Secretary of State finds it difficult to place much weight on the data provided for offshore wind farms that are not yet with him for determination. He is the decision-maker for offshore wind farms that are currently in the planning system and he will take a view on those applications at such point that he has the full data and completed assessments in front of him. The Habitats and Wild Birds Directive prevent him from granting consent to any plan or project where he could not rule out adverse effects on the integrity of European Sites (unless Article 6(4) was invoked).

(iii) Biodiversity: Other Protected Sites and Habitats

4.16 In addition to auks, the Secretary of State notes that the Panel considered a number of issues under the above heading:

(a) Brown Ridge

4.17 The Brown Ridge is a marine area off the coast of the Netherlands which is being considered as a European site. The Secretary of State notes that there was agreement with the Dutch Government that the impact of the Development on auks at the site was likely to be insignificant (ER 4.151).

(b) Marine Mammals

4.18 The JNCC agreed (ER 4.152) that the proposed Development alone and in combination would be unlikely to have a population impact for harbour porpoise. The Panel agrees with the conclusion. Natural England is satisfied that subject to there being a Marine

Mammal Mitigation Plan consistent with JNCC advice in place, which would set out appropriate mitigation measures, it was unlikely that harbour and grey seals would be killed or injured during the construction of the Development (ER 4.153). No other issues were raised by Natural England/JNCC about Marine Mammals.

(c) Ross worm (sabellaria spinulosa)

- 4.19 Ross worm reef is classified as a UK Biodiversity Action Plan (UKBAP) Priority Habitat and is listed in Annex 1 of the Habitats Directive. There is one location for such a reef within the Development site, but the JNCC accepts that provided the sea bed remains undisturbed, the ecological functions of the Sabellaria are unlikely to be affected. The Panel included a revision to the Order to link a micro-siting report to a pre-construction Annex 1 habitats survey so that provision could be made for Sabellaria mitigation (ER 4.155 – 4.156).

(d) Spread of non native species

- 4.20 There were concerns about the potential for the underwater features of the proposed Development to assist the spread of non-native species. However, the Marine Management Organisation and the Applicant have agreed a form of wording for the deemed marine licence to ensure appropriate surveys are undertaken (ER 4.157 – 4.158).

(e) Schedule 1 (of the Wildlife and Countryside Act 1981) and other protected species

- 4.21 Concerns were expressed about a number of other potential protected European species which could be affected by the onshore cable installation aspects of the Development. The Panel was satisfied that these concerns would be dealt with by the mitigation provided for in the Order (at Schedule A Part 3 Requirements 19 and 27) which both provide for the approval of relevant plans and schemes with the local planning authority and Natural England (4.159 – 4.164).

(f) Other Designated Sites

- 4.22 A number of other designated sites, beyond those that are listed above are identified in the Applicant's environmental statement. However, the Panel determines that there is no significant impact on those sites providing that suitable mitigation measures are put in place (some secured by provisions in the Order) (ER 4.165 – 4.169).

(g) Other sites

- 4.23 The Statement of Common Ground covering the onshore works indicates that providing suitable mitigation is put in place, there will be no adverse impact on other protected sites (ER 4.170). The Panel finds that provisions in the Order provide the necessary mitigation. The Panel also finds that the implementation of the agreed mitigation would not conflict with development plan policies aimed at the protection and enhancement of habitats and their biodiversity value as outlined in the Local Impact Report (agreed by the local councils) (4.172).



### **Conclusion on biodiversity**

- 4.24 The Secretary of State agrees with the Panel's conclusion (ER 4.173) that there are no reasons to withhold the grant of consent on grounds of any impacts on European sites or species or on any other habitats or species.
- (iv) Fisheries
- 4.25 The Secretary of State notes that there were objections to the Development from commercial fishing interests (ER 4.181) because of the potential impacts on cod spawning grounds, specifically in the period of January to March and because of the potential for displacement of fishing effort.
- 4.26 The Panel notes that the Centre for Environment, Fisheries and Aquaculture Science ("Cefas" – advisers to the Marine Management Organisation) did not find any evidence of disruption to cod spawning to support this objection (ER 4.181). It also notes that the Applicant has decided not to use monopile foundations in order to minimise the impacts of any disturbance from piling noise and pile driving.
- 4.28 In respect of the potential interference with fishing by displacement from the proposed wind farm site as a result of the installation of cables, the examination of the Application looked at the issue of whether fishing would be possible between the constructed wind turbines within the East Anglia One turbine array. The Panel records that there were mixed views on the topic even within the fishing community (ER 4.184).
- 4.29 The Secretary of State notes that the Panel records that a number of concerns about impacts on fishing have been settled through private agreements or by agreeing Statements of Common Ground (4.185), including with the Eastern Inshore Fisheries and Conservation Authority on undersea cabling (4.186) and with Vis Ned (the Dutch Demersal Fisheries Organisation), but he also notes that there were a number of issues where agreement was not reached (ER 4.187). He notes that the National Federation of Fishermen's Organisations (a representative body for a number of UK fishermen) made a number of suggestions for changes to the Order (ER 4.187 – 4.188), including the need for a co-existence agreement statement between the Applicant and other sea users to be agreed by the Marine Management Organisation. He notes that the Panel finds these changes are necessary as providing suitable mitigation for impacts on fish and fishing in line with the requirements in the relevant National Policy Statement (ER 4.194). The Secretary of State agrees with the Panel's conclusions in these matters.
- 4.30 The Secretary of State is aware that the Orford and Inshore Fishermen's Association submitted a representation on 20 April 2014 in response to his request that the Applicant should provide clarification on its offer to reduce the number of turbines to be used at the Development from 325 (as applied for) to 240. However, he does not consider that this representation raised any issues that had not been considered by the Panel during the Examination and notes that the issue raised has no direct relevance to the reduction in the number of wind turbines.

(v) Marine and Coastal Physical Processes

- 4.31 The Secretary of State notes that there were concerns raised about the impact of the Development on scour and sedimentation, cliff erosion at the cable landfall site, the impact on Bawdsey Cliffs SSSI and decommissioning at the cable landfall site.
- 4.32 However, the Panel notes that there is either agreement among the relevant parties that the impacts arising from the Development are not significant or mitigation measures will be secured by way of provisions in the Order to ensure that impacts are minimised as far as possible. As far as decommissioning at the cable landfall is concerned (ER 4.211 – 4.219), there were concerns that East Anglia Three and Four could operate beyond the expected lifetime of East Anglia One which could have an impact on the timing of decommissioning. The relevant local planning authorities, therefore requested a requirement in the Order that a report would be submitted after 25 years covering a suite of local factors (4.212 – 4.213).
- 4.33 The Panel accepted the above request and has also inserted some further wording to ensure that a decommissioning plan is submitted in the event that the landfall works cease to be operational even if the other connection works remain in operation. Additional wording was added to the Order to redress a drafting issue in previous drafts of the Order which could have allowed the works to continue in operation beyond the 25 years assessed in the Environmental Statement (ER 4.125).
- 4.34 In its conclusion (ER 4.219), the Panel finds that there are no reasons why consent should be withheld because of the Development's effects on marine and coastal processes. The Secretary of State agrees with the Panel's analysis of impacts and mitigation measures and with the conclusions it reaches on this matter.

(vi) Noise, Vibration, Electro-magnetic Fields and Health

- 4.35 The Panel's view (ER 4.220) that excessive noise can have wide ranging impacts on quality of life is accepted by the Secretary of State. The effects of noise from the proposed Development were considered in the Environmental Statement (ER 4.229) produced by the Applicant. The Secretary of State notes that concerns about noise and vibration impacts were raised by a number of interested parties – members of the public as well as local authorities – who made representations during the Examination. (ER 4.225 – 4.228).
- 4.36 In respect of onshore noise impacts during the construction phase, the Panel considered with the Applicant and relevant Local Planning Authorities whether there were ways to minimise the duration and timing of significant noise and vibration impacts. As a result of those discussions, there was agreement that works should be carried out only within certain specified times and on certain specified days. The Applicant and the relevant Local Planning Authorities agreed that it wasn't possible to limit the duration of works. The Panel concluded (4.254) that a proposed 'Noise and Vibration Management Scheme' together with the control over working hours to be secured in the Order would provide adequate safeguards for local residents as regards noise and vibration impacts during the construction phase.

- 4.37 In respect of noise associated with the operation of the Construction Consolidation Sites (CCS) and related HGV movements, the Secretary of State notes that the noise impacts were generally acceptable although it was pointed out that there would be detrimental impacts for certain households. Mitigation of such impacts could be difficult without having additional, unwanted, consequences on the affected properties and the matter was left open to subsequent review through the Noise and Vibration Management Plan.
- 4.38 An Outline Traffic Management Plan provides for the appointment of a company local community liaison officer to respond to local concerns and for monitoring and enforcement of a travel plan by the highway authorities.
- 4.39 The Panel conclude (ER 4.263) that with mitigation in place, the noise and vibration associated with the operation of the CCSs and related HGV movements along the Construction Access Routes would not be significant.
- 4.40 In respect of onshore impacts during the operational phase and onshore converter station noise, the Secretary of State notes that the Applicant submitted a draft Order which included a provision to limit noise to a specified level for residences in proximity to the onshore converter station. He also notes that the level being proposed was acceptable to Mid Suffolk District Council. Notwithstanding this acceptance, the Panel sought to ensure that any provision in its recommended draft Order should be precise enough to achieve its objective of controlling noise from the onshore converter station during the operational phase. The Secretary of State notes that after some discussion between the Applicant and Mid Suffolk District Council, a revised form of wording was agreed which was acceptable to the Panel as meeting the objective mentioned above. He also notes the Panel's conclusion (ER 4.267) that there would be no significant impact upon sensitive receptors even when taking account of the noise impact of the converter station combined with other existing and proposed development.
- 4.41 The Panel's assessment of the effects of noise from the offshore elements of the proposed Development on offshore receptors covered the potential impacts on fish and marine mammals and other marine life. Representations were made by a number of interested parties on potential noise and disturbance impacts from the piling process on fish, benthic and epibenthic species and marine mammals (ER 4.269 – 4.299). Particular emphasis was placed on noise impacts generated during construction of the wind farm. The Panel noted that mitigation was built in to the proposal by the Applicant by virtue of its decision that monopile foundations (the worst case option for noise impacts) would not be used to support the turbine towers and that other mechanisms that reduced the impacts of the Development (for example, a condition in the deemed marine licence for a Marine Mammal Mitigation Protocol to be agreed with the Marine Management Organisation) were also to be put in place. The Panel concluded, therefore, that noise impacts would be suitably mitigated for fish, marine mammals and other marine life (ER 4.292 and 4.300).
- 4.42 The Secretary of State is aware of the potential for Electric and Magnetic Fields (EMFs) to have direct and indirect effects on human health and on certain marine life. He is also aware that mitigation is available for such effects through the burying of cables and the

use of cable armouring. He further notes that the Panel considered EMF impacts both onshore and offshore and concluded (ER 4.311) that the Development would not result in any significant adverse impacts.

4.43 The question of the potential impacts of the disturbance of contaminated land during the onshore works on public health was considered and the Panel found (ER 4.321) that mitigation measures proposed and secured by appropriate requirements in the Order would provide adequate safeguards in respect of health-related land contamination impacts.

4.44 The Panel examined various issues relating to the health and safety of construction and operational workers both onshore and offshore, including the adequacy of the proposals for offshore accommodation facilities (ER 4.322 – 4.323). The Panel notes that the Applicant proposes to put in place appropriate mechanisms to ensure the safety of workers, including through the Code of Construction Plan, and that legislation is in place to provide suitable protection including the Offshore Installations and Wells (Design and Construction etc.) Regulations 1996 which would have effect on the proposed accommodation facilities. The Panel concluded that appropriate measures would be secured to minimise the risk to health and safety of personnel working offshore and onshore.

4.45 In respect of noise, vibration, electro-magnetic fields and health, the Secretary of State agrees with the Panel's conclusions that the impacts of the Development, with suitable mitigation in place, are acceptable (ER 4.324).

vi) Operational and Navigational Safety

4.46 The Secretary of State notes that the location of the proposed East Anglia One wind farm is in an area of the North Sea which is used by a range of vessels both commercial and recreational. He also notes that the site of the proposed wind farm is close to a Deep Water Route adopted by the International Maritime Organisation which lies a minimum of 1 nautical mile to the east of the site boundary. There are also other well used routes in the vicinity of the wind farm and it is noted that a number of vessels transit the wind farm site itself every day (ER 4.329).

4.47 The Secretary of State notes that there were concerns raised by the Maritime and Coastguard Agency (advisers to Government on navigational safety issues) and the Chamber of Shipping about the cumulative impacts on navigation and shipping of the proposed Development and other similar projects proposed in the area. He also notes that the Netherlands Government considered that the 1 nautical mile buffer zone between the proposed East Anglia One wind farm and the IMO Deep Water Route was insufficient.

4.48 The Panel examined the navigational impact of the wind farm in considerable detail (ER 4.328 – 4.350) and concluded that the mitigation measures secured in the Order and deemed marine licences ensured that risks to navigational interests would be kept as low as reasonably possible (ER 6.1). In relation to the Netherlands Government's concerns about the proximity of the Deep Water Route to the wind farm, the Maritime and

Coastguard Agency and Trinity House (the General Lighthouse Authority for England and Wales) found the separation distance to be acceptable (ER 4.333).

4.49 The Secretary of State notes the Panel concludes in respect of navigational safety that operational and navigational risks would be as low as reasonably possible (ER 6.1, page 195) and agrees that suitable safeguards will be put in place to ensure navigational safety.

(vii) Onshore and Offshore Heritage and Built Environment

4.50 Onshore, the Local Impact Report produced by the relevant local authorities shows that the majority of heritage assets that might be affected by the Development are archaeological heritage assets in the vicinity of the cable corridor (ER 4.351). For offshore heritage assets, the Applicant produced a full list showing that the key features of interest are ship and aircraft wrecks (ER 4.353).

4.51 The Panel examined the significance of various heritage assets that may be affected and inspected a number of sites of heritage features (ER 4.362 – 4.376). The Applicant identified one listed building (Fidgeons Farmhouse (Grade II)) where there would be an impact (ER 4.375) on its setting if the proposed Development was consented, but the Panel concludes that any harm to the value of the farmhouse as a heritage asset would be less than substantial and is outweighed by the very significant public benefits in terms of renewable energy that the Development would provide.

4.52 The Secretary of State agrees with the Panel's conclusions (ER 6.1, page 195) that the only harm to heritage assets would be less than substantial and would be justified because of the benefits of the project.

(viii) Landscape, Visual Impact and Good Design

4.53 The Panel noted that the East Anglia One wind farm would be too far from the shore to be visible (ER 4.380). Onshore, there would be impacts from the installation of the cable corridor (which would include the ducting for the proposed East Anglia Three and Four offshore wind farms) and the proposed converter station. The Panel examined the landscape and visual impacts of the trenching cable and duct installation, and the predicted lesser impacts on landscape and amenity during the operation of the onshore cable installation (ER 4.384 – 4.405).

4.54 The Panel concludes (ER 4.406) that due to appropriate mitigation being put in place (including the restoration of the land along the cable corridor after the works are complete) that the cable corridor would have only a very minor detrimental impact in landscape terms and that this impact would be wholly outweighed by the substantial renewable energy benefits of the Development.

4.55 The onshore converter station was the subject of a number of representations from Interested Parties with concerns about the impact of that very large industrial sized building (up to 25m high with a footprint of a maximum of 130m by 85m) constituting the **onshore converter station** would have on certain nearby properties. The Panel felt

these impacts were likely to be significant (ER 4.412). The key impacts arise from the height of the proposed structure and the difficulty of providing complete screening for it for certain observers in a small number of locations. A number of the representations concerned the impact on the countryside and on the village of Burstall (ER 4.413). The Panel considered the design principles of the onshore converter station and how far these were in accordance with the requirements of the relevant National Policy Statement. A revised set of design principles agreed by the Applicant and the relevant local planning authorities were submitted to the Panel for examination (ER 4.145).

- 4.56 The site of the proposed converter station is adjacent to an existing similar facility which is operated by National Grid which already features in views from public highways nearby. The Panel considers that the converter station would make little additional impact to user views (ER 4.418). The Applicant argued that it would not be possible to reduce the visual impact by lowering the floor level, which had been proposed by the local parish council as a mitigation measure (ER 4.421), and thus the overall height, of the building, because of the risk of flooding if that was undertaken and because doing so would result in the removal of large quantities of additional material from the site which would result in additional environmental effects – increases in noise and traffic movements, for example.
- 4.57 The Panel considered (ER 4.419 – 4.435) how any screening of the converter station might be undertaken. The Applicant had proposed a bund around the site to provide screening with the option of planting suitable plants on the bund to enhance the screening effect thus reducing a large part of the visual impact. The height of the bund could be varied to exceed the 5 metres proposed by the Applicant, providing that the overall volume of material used did not exceed the 50,000m<sup>3</sup> that had been assessed in the Environmental Statement submitted with the application. There were discussions (ER 4.419 – 4.421) as to whether screening should be provided `on-site` at the converter station (as requested by the local parish council) or `off-site` as proposed by the Applicant. In the event, the Panel determined that off-site screening secured by a s106 Agreement between the Applicant and the relevant local authorities would be acceptable. The Panel also took the view that the s106 agreement should be signed before any decision to grant consent was taken. The Secretary of State is aware that the agreement was signed on 12 December 2013.
- 4.58 In conclusion, the Panel considers that despite the mitigation measures, visual impacts would still be experienced by the residents of a nearby village of Burstall and other areas not subject to off-site screening. However, in view of the mitigation measures being proposed, including the strengthened Onshore Converter Station Design Principles and the s106 development consent obligation, supported by relevant provisions in the Order (including the need for the local authority to approve the landscaping approach), the Panel concludes (ER 4.438) that the residual landscape and visual impacts are outweighed by the national need for renewable energy infrastructure as set out in Part 3 of the National Policy Statement for Renewable Energy Infrastructure (EN-3). The Secretary of State agrees with this assessment but feels that the National Policy Statement for Electricity Networks Infrastructure (EN-5) also provides support for his positive view in this matter.

(ix) Highways and Traffic

4.59 Given the scale of the construction activities that are related to the proposed Development, it is inevitable that there will be impacts on the transport infrastructure that is being utilised for those activities and features close to it (ER 4.443). There were concerns raised (ER 4.444) about the nature of those impacts which the Panel examined.

4.60 However, it is possible to mitigate the impacts of construction traffic (ER 4.440 – ER 4.441) and the Secretary of State notes that the Applicant made a number of changes to certain of its proposals to reflect the views of a number of Interested Parties (ER 4.458) and that the Order recommended to him by the Panel contains a number of provisions that provide suitable mitigation. In this matter, he accepts the Panel's conclusion (ER 4.458) that impacts on highways and traffic have been suitably mitigated.

(x) Drainage and Water Supply

4.61 The Secretary of State notes that there were a number of concerns raised by Interested Parties during the Examination (ER 4.463 – 4.474) about the potential impacts of the Development on water run-off and flooding, on farming and irrigation systems, on the protection of waste and private water supplies and the proximity of contaminated land. However, he accepts the Panel's conclusion (ER 4.475) that any such impacts can be suitably mitigated and that provisions in the recommended draft Order are appropriate for this purpose.

(xi) Socio-Economic Impacts

4.62 The Secretary of State notes that a range of issues related to the above topic were examined by the Panel during its consideration of the Application and that the Panel stated that the consideration of these impacts "was a significant concern in the examination of the proposed Development" (ER 4.476).

4.63 There were a number of objections to the proposed Development on grounds of socio-economic impacts: the failure of the Applicant to identify the preferred ports for construction or operation phases of the wind farm; the cumulative impacts of the construction of a number of nationally significant infrastructure projects in the region and the retention of employment benefits in the local community. It was noted that certain communities would be impacted by the works more than others (ER 4.476).

4.64 Both the National Policy Statements for Energy and the National Planning Policy Framework emphasise the enhancement of local economic opportunities as relevant considerations for decision-makers. The Applicant argued that the Development would enhance employment opportunities as well as benefit the environment by way of the undergrounding of the cables (rather than using overhead transmission lines).

4.65 The Local Impact Report produced by Suffolk County Council, Mid Suffolk County Council and Suffolk Coastal District Council identified the reluctance of the Applicant to specify port facilities as a weakness in the Application because it could lead to a failure to

maximise local economic benefits because of missed employment opportunities and chances to upskill the workforce (ER 4.490 – 4.4191). The Applicant's consideration of employment opportunities in its Environmental Assessment concluded that the Development in combination with other wind farm projects would have some minor impacts on the regional labour market.

- 4.66 Letters of Intent from the Applicant show that it has undertaken extensive engagement with key stakeholders and is committed to collaborate with key partners on a skills strategy and delivery plan. The Outline Skills Strategy submitted to the Panel by the Applicant on 21 October 2013 refers to a requirement in a version of the draft Order that indicates that no stage of the authorised development shall commence until written details of a skills strategy have been submitted to and approved by the relevant planning authority. However, the Applicant later challenged the inclusion of this requirement except in circumstances where the Secretary of State considers that the tests for requirements set out in paragraph 4.1.7 of EN-1 are met: that the requirement is necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in other respects. In the view of the Panel (ER 4.496), those tests have been met so the proposed requirement should be included and it forms part of the draft Order recommended by the Panel (at Requirement 30) with amendments included by the Panel (ER 4.509). The Secretary of State notes that volume 4 of the Environmental Statement sets out scenarios which describe the potential future socio-economic effects of the proposed Development and that in the medium and high impact scenarios, "the impacts on the labour markets in each of the area catchments is assessed as being of moderate to major and hence significant impact" (ER 4.491). Given the possible major impacts on the local labour markets, the Secretary of State agrees with the conclusion of the Panel that, in the circumstances applying in this specific case, the requirement in its recommended form should be included in the Order and considers that the tests for requirements set out in paragraph 4.1.7 of EN-1 are met.
- 4.67 The impacts of the Development on tourism when considered with the proposed Sizewell C nuclear power station were assessed as not significant although local councils were concerned that any further proposals for wind farm developments within the East Anglia zone could alter that appraisal (ER 4.496 – 4.498).
- 4.68 There were concerns about the impact of the cable route on a proposed major greenhouse development associated with a nearby energy from waste plant (ER 4.499). However, the agreement of a Statement of Common Ground between the Applicant and the developer of that project resolved this issue.
- 4.70 The proximity of the cable route to a number of communities was also a source of concern. Great Bealings Parish Council proposed that an amenity fund should be established to finance an enhancement scheme for community projects and other councils and the Deben Estuary Partnership raised similar matters (ER 4.500 – 4.505). In response, the Applicant stated the impacts of the project would be temporary and would be addressed through various control mechanisms. The Applicant also pointed out the general socio-economic benefits that would arise from the construction of the Development and that further mitigation had already been embedded in the scheme, such as the undergrounding of the cabling (ER 4.505). The Panel agreed that the



Applicant's arguments had some merit particularly in terms of a reduction in visual intrusion through the undergrounding of cables although it acknowledged the cost of this in terms of disruption and tree and hedge loss. However, the Panel also felt that the socio-economic benefits in the Applicant's case were lessened slightly because at present there was no quantification of them (ER 4.506).

4.71 The Panel concludes (ER 4.508) that the changes made to the recommended Order by the Applicant, along with changes made by the Panel would sufficiently mitigate the impacts on socio-economic issues. The Secretary of State agrees with this conclusion.

### **Compulsory Acquisition**

4.72 The Secretary of State notes that there are a number of tests that need to be met in order to provide suitable justification for compulsory purchase of land needed for purposes connected with Nationally Significant Infrastructure Projects. The Applicant has sought to acquire land compulsorily to secure the land and rights required to construct the onshore elements of the proposed Development within a reasonable commercial timescale. The Planning Act sets out that compulsory acquisition can only be granted if certain conditions are met:

- there must be a compelling case in the public interest;
- there must be a need for the project to be carried out; and,
- there must be consistency and coherence in the decision-making process.

4.73 In addition, there are general duties on decision-makers who must consider whether:

- all reasonable alternatives to compulsory acquisition have been explored;
- the applicant has a clear idea of how it intends to use the land and to demonstrate funds are available to pay for the acquisition; and
- they are satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the inevitable interference with the human rights of those affected.

4.74 The Panel considered each of the relevant issues and concluded that the proposed compulsory acquisition met each of the relevant requirements in terms of both the Development and the cable and ducting associated with the proposed East Anglia Three and East Anglia Four offshore wind farms (ER 5.32 – 5.107 and 5.111 – 5.173). The Panel concludes (ER 6.3) that, taking all these factors into account, there is a compelling case in the public interest for the compulsory acquisition powers in respect of the Compulsory Acquisition Land shown on the amended Land Plans that the proposal would comply with s122(3) of the 2008 Act (ER 6.3).

4.75 The Secretary of State has considered the case set out by the Panel in comparison to the conditions and requirements set out above. The Secretary of State notes that the Applicant has reached agreement with each of the affected landowners (including statutory undertakers) that obviates the need for compulsory purchase of land but has maintained the compulsory acquisition provisions in case of any unforeseen problems. The Secretary of State is satisfied that the Panel's analysis of the issues is correct and

that the proposed provisions in the recommended draft Order meet the relevant requirements.

## **5. Transboundary Impacts**

- 5.1 The increasing number of offshore wind farms extending further out into the North Sea have the potential, either directly or indirectly, to affect protected sites in the territories of other European Economic Area (“EEA”) states. A screening study undertaken by the Secretary of State for Communities and Local Government (“SOSCLG”) on behalf of the Panel identified a number of potential transboundary impacts in other EEA states (Belgium, Netherlands, France, Germany, Norway and Denmark) covering possible impacts on marine mammals, birds, commercial fisheries and navigation.
- 5.2 The identified EEA states were asked whether they wished to participate in the examination of the Application. Germany responded to say that it did not wish to participate in the process and no response was received from Belgium, Denmark and France. Norway and Netherlands confirmed they wished to participate and so SOSCLG wrote to them on 25 January 2014 providing links to the application documents and offering an opportunity to make a representation. Norway did not respond to this request. The Netherlands Ministry of Infrastructure and Environment submitted a relevant representation raising concerns about impacts on shipping and navigational safety (see paragraphs 4.47 and 4.48 above); the environmental risks of collisions, including oil spills; and ecological impacts at the Brown Ridge (see paragraph 4.147 above). The Applicant met with the Netherlands Ministry to discuss the issues raised.
- 5.3 SOSCLG noted that mitigation measures to minimise navigational safety impacts had been provided for in the draft Order and that the Applicant and the Netherlands Ministry had agreed that impacts on Auks were unlikely to be significant. As far as impacts on harbour porpoise were concerned, the Applicant and the Netherlands Ministry agreed that pre and post construction monitoring of marine mammals would be required in the draft Order.
- 5.4 The Secretary of State notes that the Panel took into account the representations made by the EEA states outlined above during the Examination (ER 3.89) and that it concluded (ER 6.4, page 196) that all potential transboundary impacts have been assessed have been made known to the relevant EEA states and would be appropriately mitigated if the recommended Order was to be made. The Secretary of State agrees with this conclusion.

## **6. Representations Received After Close of the Examination of the East Anglia One Application**

- 6.1 The Secretary of State is aware that one of the Interested Parties wrote to him on 23 April 2014 to raise a concern about the impact on the landscape of the laying of the onshore cable for the Development between the landfall at Bawdsey and Sproughton and to suggest that a Countryside Legacy Project along the River Deben would offer compensation for the disruption caused to residents of, and others with an interest in, the area to be affected.

- 6.2 As indicated in paragraph 4.54 above, the Secretary of State notes the Panel's consideration of the impacts of the installation of the onshore cabling and agrees with the conclusion it reaches that due to appropriate mitigation being put in place the cable corridor would have only a very minor detrimental impact in landscape terms and that this impact would be wholly outweighed by the substantial renewable energy benefits of the Development.
- 6.3 As noted in paragraph 4.3 above, the Secretary of State wrote to the Applicant on 8 April 2014 to seek clarification of the offer it had made to reduce the number of turbines in the Development from 325 to 240. The letter to the Applicant was copied to interested parties who were invited to make representations. Copies of all written responses were published on the Planning Inspectorate's web-site by 23 April 2014 and further responses on those comments were published on 8 May 2014. In the light of the additional comments received, the Secretary of State considers that he does not require any further information on which to take a decision with respect to the Application.

## **7. Secretary of State's Conclusion and Decision**

- 7.1 For the reasons given in this letter, the Secretary of State agrees with the Panel that there is a compelling case for granting consent for the Development given the contribution it will make to the production of renewable energy and that this case is not outweighed by the potential adverse local impacts of the Development as mitigated by the proposed terms of the Order.
- 7.2. The Secretary of State has therefore decide to accept the Panel's recommendation at ER 6.5 to make the Order granting development consent on the basis of the Recommendations set out in the draft Order submitted to him by the Panel (in Appendix A to the ER), but subject to the modifications outlined in paragraphs 8.1 to 8.10 below. He confirms that, in reaching this decision, he has had regard to the local impact report submitted by Suffolk County Council, Mid Suffolk County Council and Suffolk Coastal District Council and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

## **8. Modifications to the Order**

- 8.1 For the reasons set out above, the Secretary of State has decided to make changes to the Order recommended to him by the Panel.
- 8.2 The Secretary of State has decided to make various changes to the form of the draft Order as set out in Appendix A of the Report which, while altering the way in which specific issues are dealt with, do not materially alter its effect, including changes to conform with the current practice for Statutory Instruments (e.g modernisation of language), changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

- 8.3 The Secretary of State notes that there is no suggestion from the consultees who commented on the proposed reduction in the number of turbines that such a reduction would increase the potential environmental impacts of the project. He further notes that whilst the Applicant considers that the reduction in turbine numbers might result in an approximately 26% reduction in bird collisions, the RSPB has reservations about the scale of any potential reduction in impacts. However, Natural England considers that “the proposed reduction in the number of turbines to 240 is within the parameters of the Rochdale Envelope assessed in the Environmental Statement” and “welcomes this mitigation measure as it reduces the overall impacts of the project on nature conservation.”
- 8.4 The Secretary of State also notes the Applicant’s confirmation that a “reduction in the maximum number of wind turbines from 325 to 240 would not affect the ability of [the Applicant] to construct the project up to its maximum capacity of 1200MW” and its rationale that this is due to “progress with procurement activities” which means it can “confirm that turbines with a capacity of 5MW or greater can be used”.
- 8.5 The Secretary of State, therefore, considers that the proposed reduction in turbine numbers will have no adverse environmental effects but may rather have the potential to reduce such effects, particularly in respect of bird collisions. As the Applicant has confirmed that the proposed reduction would not affect its ability to construct the Development to its maximum capacity, he is reassured that there would not necessarily be an associated reduction in the benefits of the Development in terms of the amount of renewable energy produced. He has, therefore, decided to accept the proposal by the Applicant to reduce the maximum number of turbines permitted in the wind farm from 325 to 240. The Applicant provided a form of wording for inclusion in the draft DCO (at Schedule A, Part 1, section 1(a)) in its response to the Panel’s Rule 17 and Rule 8(3) request of 29 November 2013 [REP 342] to reflect this change. The Secretary of State proposes to incorporate this wording into the final Order. In making this change to Schedule 1, Part 1, paragraph 1(a), the Secretary of State notes that a corresponding change needs to be made to paragraph 2(2)(a) of Schedule I (“Deemed Licence Under Marine and Coastal Access Act 2009 – Generation Assets”).
- 8.6 The Secretary of State has also decided to add a new Requirement in Schedule 1 Part 3 to specify in a new sub-paragraph (f) that the turbines used by the East Anglia One developer should have a minimum generating capacity of 5MW except with the written permission of the Secretary of State. This Requirement has been included to ensure that the generating capacity of the wind farm is maximised while the potential impact on the environment is reduced to as low an extent as possible. The Secretary of State notes that a corresponding change needs to be made to the Deemed Marine Licence under the Marine and Coastal Access Act 2009 – Generation Assets in Schedule 10, Part 2, paragraph 1 to add a new sub-paragraph (f).
- 8.7 The Secretary of State notes that the Order grants the undertaker the power to construct and *maintain* the authorised project (Part 2, article 4). In the deemed Marine Licences, however, there was no explicit reference to maintenance being a licensed activity. He considers that certain maintenance activities, as defined, do fall within the scope of the

deemed Marine Licences and has therefore added “maintenance” article 2(2) of both deemed Marine Licences as one of the activities authorised in relation to the construction and operation of the authorised scheme.

- 8.8 The Secretary of State has also made amendments to Requirement 2 (“time limits”) of Part 3 of Schedule A (to remove reference to extension of time by the Secretary of State in writing) and to insert a new paragraph 6 in both Schedule 10 Part 2 and Schedule 11 Part 1. These amendments are made to ensure that changes made by agreement under the provisions of the Order are limited to appropriate cases, and do not purport to confer authority to make changes which should be made under relevant statutory change or variation process.
- 8.9 The Secretary of State has decided to revise Article 5 of the recommended Order to change the provision that stipulates the project developer may transfer the deemed marine licence to a third party only with the consent of the Marine Management Organisation. He proposes instead that the provision should require the consent of the Secretary of State in consultation with the Marine Management Organisation. He considers that the operational interests of the Marine Management Organisation can be appropriately secured by such consultation and so it would be unnecessarily onerous to require the Applicant to have to secure the consent of the Marine Management Organisation as well as the Secretary of State in circumstances where it wished to transfer the benefit of the Order (which would include the deemed Marine Licence).
- 8.10 Finally, the Secretary of State notes the comments of the Marine Management Organisation (ER 4.532) that it had objected to the splitting of the deemed Marine Licences although he understands that this issue became less significant with the inclusion of two deemed Marine Licences in the Order. Whilst the Secretary of State would disagree with a position which held that the transfer of part of a deemed Marine Licence was not possible, in this instance, he is content to agree to the provision in the Order which allows only the transfer of the whole of the deemed Marine Licence (Part 2 Article 5). This is because the deemed Marine Licences have been specifically included in the Order as two separate licences so as to facilitate a potential transfer of a part of the benefit of the Order without transferring part of either of the deemed Marine Licences.

## **9. Open Space Certificates (s132 Planning Act 2008)**

- 9.1 The Secretary of State notes that the Applicant made an application under section 132 of the 2008 Act to the Department of Communities and Local Government (“CLG”) to authorise the acquisition of rights over open space land at the export cable landfall site and that CLG issued the necessary certificate on 6 March 2014.

## **10. Crown Land**

- 10.1 Section 135(2) of the 2008 Act requires consent from a relevant Crown Authority for inclusion of any provision applying in relation to “Crown Land”. In the case of the current application, the Crown Land provisions apply to the Crown Estate and to the Highways Agency. In both cases, letters were received to indicate that consent was given subject to the inclusion of protective provisions in the DCO. The Panel included such provisions

in the recommended draft Order and the Secretary of State, therefore, considers that there are no reasons that would preclude him from granting consent.

**11. Challenge to decision**

11.1 The circumstances in which the Secretary of State`s decision may be challenged are set out in the note attached at Annex C to this letter.

**12. Publicity for decision**

12.1 The Secretary of State`s decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment ) Regulations 2009.

Yours sincerely

GILES SCOTT  
Head, National Infrastructure Consents

**Annex A – Panel`s Report**

**Annex B – Copy of the Order as Made by the Secretary of State**

**Annex C – Habitats Regulation Assessment**

## Annex D

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks from the date when the Order is published. The East Anglia ONE Offshore Windfarm Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/eastern/east-anglia-one-offshore-windfarm/>

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