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24 March 2016

Dear Sirs

**PLANNING ACT 2008  
APPLICATION FOR A NON-MATERIAL CHANGE TO THE EAST ANGLIA  
ONE OFFSHORE WIND FARM ORDER 2014**

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 application (the "Application") which was made by East Anglia ONE Limited ("the Applicant") on 19 May 2015 for a change which is not material to the East Anglia ONE Offshore Wind Farm Order 2014 ("the 2014 Order") under section 153 of, and Schedule 6 to, the Planning Act 2008 (the "2008 Act").
2. The original application for development consent under the Planning Act 2008 was submitted to the Planning Inspectorate by the Applicant on 8 November 2012. Development consent was granted by the Secretary of State on 16 June 2014 for the construction and operation of an offshore wind turbine generating station in the North Sea, a minimum of 43km off the coast of Suffolk, comprising up to 240 wind turbines with a gross electrical capacity of up to 1200MW and associated offshore and onshore infrastructure.
3. The Applicant is seeking consent for a change to the 2014 Order to allow an option to construct either a 750MW wind farm with a High Voltage Alternating Current ("HVAC") transmission system or a 1200MW wind farm with a High Voltage Direct Current ("HVDC") transmission system which was permitted in the 2014 Order. (The wording of the Application means that only one option could be constructed under the Order – construction of both options would not be permitted.) The change to the HVAC

transmission system would generate a need for an increase in the height of the electrical equipment at the onshore sub-station.

4. The Application was made because the East Anglia ONE project participated in the first Allocation Round of the Contract for Difference scheme and was awarded a contract for 714MW of capacity on 26 February 2015. The Applicant considers that a project of that size would need to connect to the National Grid transmission system through HVAC technology rather than HVDC apparatus. The request for a varied project with a capacity of up to 750MW allows for transmission losses. While the 2014 Order would allow a project with a 750MW generating capacity to be built, the proposed HVAC transmission system would not be permitted.

### **Summary of the Secretary of State's Decision**

5. The Secretary of State is satisfied that the change requested by the Applicant is not material and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the 2014 Order so as to authorise the changes detailed in the Application. This letter is the notification of the Secretary of State's decision in accordance with regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulation 2011 (as amended) ("the Change Regulations").

### **Consideration of the materiality of the proposed change**

6. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations. Different procedures need to be followed depending on whether a change is deemed to be material or non-material. Paragraphs 9 – 16 of the Department of Communities and Local Government's publication "Guidance on Changes to Development Consent Orders" (December 2015) ("the DCLG Guidance") sets out a number of characteristics that provide a differentiation between non-material and material changes. Criteria that suggest a change may be material are:
  - (a) where any new or materially different effects on the environment as a result of the change mean that an update to the original ES (from that at the time the original Development Consent Order was made) is required (to take account of those effects);
  - (b) where the impact of the development to be undertaken as a result of the proposed change invokes the need for a new Habitats Regulations Assessment (HRA), or the need for a new or additional licence in respect of European Protected Species ("EPS") (in addition to those at the time the original Development Consent Order was made);

- (c) where the change would involve compulsory acquisition of any land that was not authorised through the existing Development Consent Order; or
  - (d) where the proposed changes have a potential impact on local people and businesses.
7. The Secretary of State therefore began her consideration of the materiality of the proposed variation by considering the matters set out in paragraph 6 above:
- (a) The Applicant supplied information which compares the proposed parameter changes against the worst case scenarios applied in the original Environmental Statement. The conclusion of this analysis was that there would be increased impacts on only a small number of parameters: the maximum height of some equipment at the onshore sub-station and the maximum number of onshore cables permitted (although these would be located within the same number of trenches as permitted under the 2014 Order).
  - (b) While there has been no increase in the extent of any environmental impact change nor are there any new impacts from the proposed changes to the 2014 Order, in the light of a consultation on a possible Special Area of Conservation ("pSAC") being considered under the Habitats Regulations, DECC officials have undertaken a Habitats Regulations Assessment of the likely impacts on harbour porpoise of the proposed Southern North Sea pSAC as required by the Habitats Directive. However, we do not consider the need for this HRA to have been triggered by a change in environmental impacts resulting from the proposed changes to the 2014 Order. In addition, there is no indication from Natural England (NE) or any other statutory nature conservation body or non-Government Organisation that there is a need for any new or additional EPS licence to be granted before the changes requested by the Applicant could be put into effect.
  - (c) There are no changes to the compulsory acquisition provisions set out in the 2014 Order.
  - (d) The potential impacts on local people and businesses are no greater than those that arise from the development permitted by the 2014 Order.
8. The Secretary of State therefore concludes that none of the specific indicators referred to in the DCLG Guidance suggest that the proposed

changes are a material change. She has also had regard to the effect of the changes and considered whether there are any other circumstances in this particular case which would lead her to conclude that the proposed changes are material but has seen no evidence to that effect.

9. The Secretary of State is therefore satisfied that the changes proposed in the Application are not material and should be dealt with under the procedures for non-material changes.

### **Consultation and Responses**

10. The Planning Inspectorate on behalf of the Secretary of State publicised the Application in accordance with regulation 6 of the Change Regulations and on 5 June 2015 consulted the persons specified in regulation 7 of the Change Regulations in the manner prescribed. The deadline for receipt of representations on the Application was 20 July 2015.
11. The Planning Inspectorate received representations within the deadline for receipt of representations from: the Marine Management Organisation, NE, Suffolk County Council, Suffolk Coastal District Council, Mid-Suffolk District Council, Medway Council, the Office of Road and Rail, Anglian Water, the Civil Aviation Authority, the Environment Agency, Historic England, GTC, Vodafone, Public Health England and one individual.
12. On 19 January 2016, the Joint Nature Conservation Committee (“the JNCC”) issued a consultation on pSACs for harbour porpoise, including one in the Southern North Sea which overlaps the site of the East Anglia ONE Offshore Wind Farm and is a single feature site proposed for the purpose of aiding the conservation of harbour porpoise populations throughout UK waters. On 21 January 2016, NE consulted on potential extensions and the addition of features to two Special Protection Areas (SPAs) – the Hamford Water SPA and the Outer Thames Estuary SPA. The term ‘potential SPA’ (“pSPA”) applies to proposed extensions of SPAs and the addition of new features to existing sites. In view of these consultations, and the fact that pSACs and extensions to potential SPAs are treated as a matter of Government policy as if they were ‘designated’ sites, the Secretary of State was obliged to consider the likely significant effects of the proposed changes on the pSAC and potential SPA extensions both alone and in combination with other plans or projects.
13. The Secretary of State, therefore, initiated a consultation on 5 February 2016 published on the Planning Inspectorate website (“the Secretary of State’s consultation”) in order to inform her consideration of the potential impacts of the Application on a pSAC being considered in the Southern North Sea (for harbour porpoise) and on two extensions and addition of features to existing Special Protection Areas (“SPAs”) (together “the SoS

consultation”). The Secretary of State’s consultation sought comments on the potential impact of the Application on those sites and included some specific wording that was being considered as a Requirement for inclusion in the Order to provide suitable protection for the harbour porpoise feature of the pSAC from any impacts of the proposed changes. Consultation responses were received from: The Wildlife Trusts, Whale and Dolphin Conservation, WWF-UK, NE, the JNCC, the Marine Management Organisation (“the MMO”) and the Applicant. On 23 February 2016, the Secretary of State sought views from all parties with an interest in the issue. No further comments were received.

### **Potential Impacts Raised by Consultees**

#### **Electro-Magnetic Fields (“EMFs”)**

14. Concerns were raised about the potential impacts of HVAC cabling on human health.

#### **Mitigation Measures for the Impacts of the Development**

15. A respondent requested that planners “give regard to the affects [sic] the construction work will have on the local community and consider a reasonable mitigation package”. Concerns were raised about the lack of mitigation measures to alleviate the impacts of the proposed development and a number of other projects were cited where developers had provided such mitigation.

#### **Visual Impacts from Onshore Sub-station Equipment**

16. Concerns were expressed about the potential impacts of changes in the height of certain pieces of electrical equipment at the onshore sub-station.

### **Consideration of Potential Impacts Raised by Consultees**

#### **Electro-Magnetic Fields**

17. Public Health England, in its consultation response, states that the Applicant should be required to provide the operating voltages and confirm that the fields arising from them will comply with ICNIRP (International Commission on Non-Ionizing Radiation Protection) exposure guidelines [in accordance with Government Code of Practice, “Power Lines: Demonstrating compliance with EMF public exposure guidelines (March 2012)”].
18. The Applicant comments in the documentation that accompanied the Application that *“with respect to EMF, the proposed electrical infrastructure for the East Anglia ONE offshore windfarm will comply with Government*

*policy and with UK exposure guidelines. The resultant electric and magnetic fields generated will be extremely low, or negligible, and will fall well under the accepted UK guidelines on exposure levels.”*

19. Given the statement from the Applicant confirming that it will comply with Government policy and with relevant UK guidelines, the Secretary of State considers that suitable protection exists such that she is able to conclude that there will be no significant impact on human health from the adoption of a HVAC transmission option.

#### Mitigation for Onshore Works

20. While there will be an increase in the number of cables being installed for any HVAC option when compared to the number of High Voltage Direct Current cables permitted by the 2014 Order, these will still be laid in the same number of trenches as proposed for the original application. The impacts of the trenching for the original proposal were fully considered by the Examining Authority for the East Anglia ONE project and the decision was taken that suitable mitigation for that activity (and other onshore works more generally) was provided within the recommended East Anglia ONE Offshore Wind Farm Order and that consent could, therefore, be granted. The Secretary of State does not consider that any further measures are needed now in respect of this matter.

#### Visual Impacts of the Onshore Works

21. While an HVAC transmission option would result in a decrease in the maximum building height of the onshore sub-station from 25 metres to 21 metres, there would be an increase in the maximum height of the outdoor electrical infrastructure from 10 metres to 15 metres. The dimensions of the proposed HVAC sub-station would be dependent on the balance of indoor and outdoor equipment but would be less than the dimensions granted development consent in the 2014 Order.
22. The visual impact of the proposed onshore sub-station featured quite heavily in the Examination of the original application for development consent. The Report from the Examining Authority in the Planning Inspectorate states: *“It also finds that significant residual visual impacts resulting from the OCS [Onshore Converter Station], especially as experienced in Burstall, would remain particularly from those viewpoints that would not be subject to off-site planting. However, because of the mitigation referred to throughout this subchapter, as embedded in the scheme set out in the recommended Order, and because of the requirement for local authority approval of the landscaping approach, the Panel concludes that these residual landscape and visual impacts are*

*outweighed by the national need for renewable energy infrastructure as set out in Part 3 of NPS EN-1.”*

23. The views of Suffolk County Council, Suffolk Coastal District Council and Mid Suffolk District Council were that the overall significance of effects would not be altered by the changes sought in the Application.
24. The purpose of the Application is to permit an option for a wind farm with a lower generating capacity than that set out in the 2014 Order with a different transmission system. As indicated above, the generating station element of the smaller project could be built under the terms of the existing Order (there was no minimum capacity specified) but the changes to the transmission system could not.
25. Given the potential impacts from a variation of the maximum permitted height of some of the onshore works, the Secretary of State has considered whether those impacts are outweighed by the benefits, including the need for the development. The Secretary of State in a speech dated 18 November 2015 stated that “New nuclear, new gas and, if costs, come down, new offshore wind will all help us meet the challenge of decarbonisation.” In addition, the Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) both set out that electricity generation from offshore wind farms is expected to contribute a significant proportion of renewable energy generation. The Secretary of State considers, therefore, that the need for a project, even with a reduced capacity of 750MW, is established. She further considers that the potential benefits of the project including low carbon electricity generation capacity outweigh the potential adverse impacts.

#### Habitats Regulations Assessment

26. The Secretary of State considered the relevant and important policies in respect of the United Kingdom’s international obligations as set out in the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (“the Offshore Habitats Regulations”) and the Conservation of Habitats and Species Regulations 2010 (as amended) (“the Habitats Regulations”) which transpose the Habitats Directive (92/43/EC) into UK law. Both sets of Regulations require the Secretary of State to consider whether the development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site or European Offshore Marine Site, as defined in the Habitats Regulations and the Offshore Habitats Regulations respectively. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 61(1) of the Habitats Regulations and regulation 25 of the Offshore Habitats Regulations to

address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if she has ascertained that it will not adversely affect the integrity of a European site or European Offshore Marine Site.

27. As indicated above, on 19 January 2016, the JNCC issued a consultation on pSACs for harbour porpoise, including one in the Southern North Sea and on 21 January 2016, NE consulted on possible extensions and addition of features to the Hamford Water SPA and the Outer Thames Estuary SPA. The Secretary of State, therefore, treated the pSAC and the potential SPA extensions as if they were 'designated' sites and considered the likely significant effects of the proposed changes on their integrity both alone and in-combination with other plans or projects.
28. As indicated in paragraphs 10 – 13 above, as part of her consideration, the Secretary of State consulted a range of organisations and people in order to seek their views on the potential impacts of the Application. The views received are set out below.

#### The MMO

29. In response to the Secretary of State's consultation, the MMO stated that, while it was important the potential impacts on the SAC were considered as part of the change application, it felt that some of the wording proposed for the new pSAC-related Requirement in the Order was unnecessary as the provisions were already set out in legislation and were, therefore, already a legal requirement, while other parts duplicated provisions in the Deemed Marine Licence that formed part of the 2014 Order.

#### NE

30. In response to the Secretary of State's consultation, NE re-iterated its previous view that it had no nature conservation concerns with the change proposal. NE also stated that it did not consider there was a need for the Secretary of State to include an additional pSAC-related Requirement in the 2014 Order. NE also pointed out that the deemed marine licence for the consented Development already contained a provision requiring the Applicant to provide a Marine Mammal Mitigation Protocol ("MMMP") and that a draft of such a Protocol had already been submitted to NE by the Applicant and that, in considering its suitability, an assessment of the potential impacts on the pSAC would have to be undertaken.
31. Finally, NE stated that the Application would not pose a Likely Significant Effect on either of the two SPAs that were also subject to the consultation.



## The JNCC

32. The JNCC's response to the Secretary of State's consultation broadly agreed with the Secretary of State's proposed wording for a Requirement linked to pSAC protection but suggested that the injury and disturbance provisions should be linked to the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007.
33. In addition, the JNCC indicated that irrespective of any changes to the 2014 Order, it would expect to see a review of the Order when any formal submission of the Southern North Sea pSAC was made to the European Commission (as a candidate SAC).

## Whale and Dolphin Conservation

34. WDC considered that a reduction in the number of turbines being deployed at the site of the East Anglia ONE offshore wind farm would result in a lesser impact on marine mammals and that this was a positive outcome. However, it pointed out that there was already a requirement for a MMMP in the 2014 Order, and that the additional wording being proposed would only mean that integrity of the pSAC was not adversely affected.
35. WDC also stated that as the Secretary of State had indicated that there is the potential for adverse effect on the integrity of the Southern North Sea pSAC in combination with other projects, the mechanism for regulating that impact should not be the MMMP but an appropriate assessment with any relevant mitigation measures included in the order, when any review of the consent was carried out. WDC sought clarification on whether the proposed condition would obviate the need for a review of the consent when any formal submission of the Southern North Sea pSAC was made to the European Commission (as a candidate SAC).

## WWF-UK

36. Overall, WWF had no objection to the Application indicating that a smaller project with fewer turbines than was originally proposed would lead to a reduction in noise impacts on marine mammals. The WWF also asked about the relationship between the Application and any review of consents needed when any formal submission of the Southern North Sea pSAC was made to the European Commission (as a candidate SAC).

## The Wildlife Trusts

37. The Wildlife Trusts had no fundamental concerns regarding the Application and the potential impacts on the pSAC, but did query how any

consideration of the change application would relate to the need for a review of the consent when any formal submission of the Southern North Sea pSAC was made to the European Commission (as a candidate SAC).

### The Applicant

38. Bond Dickinson on behalf of the Applicant questioned whether the proposed additional Requirement was necessary given that the deemed marine licence already contained provisions related to marine mammal mitigation. Bond Dickinson suggested changes to the proposed text and proposed that any relevant wording should be included in the deemed marine licence rather than the 2014 Order.

### Conclusions on Habitats Issues

39. DECC carried out a Habitats Regulations Assessment (HRA) of the potential impacts of the change application on the Southern North Sea pSAC and the SPA extensions and addition of features. On the SPA extensions and addition of features, the HRA concluded that there would be no likely significant effect from the Application on each of the SPAs and that an appropriate assessment would not, therefore, need to be carried out.
40. However, the HRA's conclusion on the potential impacts on the Southern North Sea pSAC was that there could be a likely significant effect on the conservation objectives of the pSAC and, therefore, an appropriate assessment would be needed. The appropriate assessment considered the potential for; injury, noise disturbance and displacement as a result of piling activity and vessel movements during construction; the potential for collisions with construction and maintenance vessels; potential changes to feeding habitats and prey distribution during construction and operation; and, the potential in-combination noise disturbance and displacement impacts from other nearby offshore wind farms, dredging activities and seismic surveys.
41. The appropriate assessment notes that the Applicant proposed embedded mitigation measures within the original East Anglia ONE wind farm project envelope to offset the potential noise impacts to harbour porpoise from the piling of foundation structures by the use of pin piles which will reduce peak noise levels (from those associated with the installation of monopile foundations, for example) and by the use of 'soft start' procedures as per JNCC guidance on minimising the risk of disturbance to marine mammals. However, the appropriate assessment also refers to the need for further mitigation as proposed by the Secretary of State's additional Requirement to prevent an adverse impact on the harbour porpoise feature of the Southern North Sea pSAC.

42. In response to the concerns raised in relation to the appropriateness of a further Requirement to provide protection for the harbour porpoise features of the pSAC, the Secretary of State considers that:
- (i) The wording of the relevant conditions in the Deemed Marine Licences in the 2014 Order would not necessarily provide suitable full protection in respect of the pSAC as it relates only to one aspect of protection for marine mammals i.e. from acoustic disturbance;
  - (ii) While it is possible that the MMO could vary the relevant conditions in the deemed Marine Licence, so that they include the necessary protection, the Secretary of State must be satisfied that is the position before making a decision to make the changes and cannot rely on the MMO doing so and, for this reason the Secretary of State must take action to satisfy herself that appropriate measures are being taken to ensure that there is no adverse effect on the integrity of the interest features of the Southern North Sea pSAC;
  - (iii) While acknowledging that this approach might require separate marine mammal mitigation processes to discharge both the proposed new Requirement, and the corresponding conditions in the deemed Marine Licences, the Secretary of State considers that it is possible that one protocol could be prepared to cover both the Requirement and deemed marine licence conditions which could be submitted to both the MMO and DECC for approval.
43. In response to concerns about whether the new Requirement would obviate the need for a review of the 2014 Order when the specific details of the pSAC are submitted to the European Commission (as a candidate SAC), the Secretary of State does not see the Requirement as a replacement for such a review which would be undertaken at the appropriate time.

### **Environmental Impact Assessment**

44. The Secretary of State has considered whether the Application would give rise to any new significant effects or materially different effects when compared to the effects set out in Environmental Statement for the development authorised by the 2014 Order.
45. The Secretary of State is satisfied that the 'Supporting Environmental information' provided is sufficient to allow her to make a determination on the Application.

46. As there are no new significant environmental impacts as a result of this proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects.

## **General Considerations**

### *Deemed Marine Licence*

47. The Secretary of State notes that certain of the changes to the 2014 Order being sought by the Applicant apply equally to the deemed marine licence for the East Anglia One wind farm. Consequently, the Applicant has made an application to the MMO to make similar changes to the dML.

### *Equality Act 2010*

48. The Equality Act 2010 introduced a public sector “general equality duty”. This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships<sup>1</sup>; pregnancy and maternity; religion and belief; and race. The Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to this Application.

### *Human Rights Act 1998*

49. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Development. The Secretary of State considers that the proposed changes to the development consent granted under the 2014 Order would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

### *Section 40(1) of the Natural Environment and Rural Communities Act 2006*

50. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Application considers biodiversity sufficiently to accord with this duty.

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<sup>1</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

## **Secretary of State's conclusions and decision**

51. The Secretary of State considers that the impacts of the changes proposed are small when considered in context of the development authorised by the 2014 Order and that, for the reasons set out above, it is appropriate and advantageous to authorise the proposed change as detailed in the Application.
52. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to the 2014 Order as set out in the Application. The Secretary of State is therefore today making the amending Order requested by the Applicant subject to new Requirement in respect of the Marine Mammal Mitigation Protocol and a number of minor modifications which do not materially alter its effect.

## **Challenge to decision**

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

## **Publicity for decision**

54. The Secretary of State's decision on this Application is being notified as required by regulation 8 of the Change Regulations.

## Corrections to the 2014 Order

55. The Secretary of State notes that the Applicant requested by way of a letter dated 20 June 2014 that correctable errors be made to the 2014 Order under section 119 of and Schedule 4 to the Planning Act 2008. The Secretary of State has considered the requested corrections and made those that are appropriate under the powers granted to her by the Act. Further details can be found in the 'Corrections Notice' issued at the same time as this letter.

Yours sincerely



Giles Scott  
Head of National Infrastructure Consents and Coal Liabilities

**LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Amending Order is published. The Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

**<http://infrastructure.planninginspectorate.gov.uk/projects/eastern/east-anglia-one-offshore-windfarm/?ipcsection=overview>**

**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)**