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Dear Ms Holroyd

**PLANNING ACT 2008
PLANNING CONSENT APPLICATION – PROPOSED WALNEY EXTENSION
OFFSHORE WIND FARM**

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:
 - (a) the report dated 7 August 2014 of the Examining Authority, a panel of three Commissioners led by Robert Macey ("the ExA"), which conducted an examination into the application (the "Application") submitted on 28 June 2013 by DONG Energy Walney Extension (UK) Ltd ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for, the Walney Extension Offshore Wind Farm ("the Development") an extension to the existing Walney I and Walney II Offshore Wind Farm ; and
 - (b) representations received by the Secretary of State and not withdrawn in respect of the Application.
2. The examination of the Application began on 12 November 2013 and was completed on 12 May 2014. The examination was conducted on the basis of written evidence submitted to the ExA, three issue specific hearings, two open floor hearings and a number of site visits.

3. The Order, as applied for, would grant development consent for the construction and operation of an offshore wind farm with a gross electrical capacity of up to 750MW, located in the Irish sea, to the north-west of the existing Walney I and Walney II Wind Farm and at its closet points 19km west of the Cumbrian coast, 35km north west of the Lancastrian coast and 31km south east of the Isle of Man. The Development would comprise up to 207 wind turbines with a maximum height to the tip of the vertical blade of 222m, a network of subsea inter-array cables together with associated development offshore of up to three substation platforms and connection works of up to five export cable systems. Associated development onshore consists of up to five onshore export cable systems, an electrical substation compound, permanent access to the electrical substation compound, temporary access roads and working areas and up to two 400kV export cable systems.
4. Published alongside this letter is a copy of the ExA's report ("the Report") as amended by the Errata Sheet (Ref EN 010027) of corrections produced by the Planning Inspectorate and agreed by the ExA prior to a decision being made. The ExA's findings and conclusions are set out in chapters 4 and 5 of the Report, and the ExA's recommendation is at chapter 8.

Summary of the ExA's Recommendation

5. The ExA recommended that the Order be made, on the basis of the provisions set out in Appendix D to the Report.

Summary of the Secretary of State's Decision

6. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is a 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 ("2009 Regulations").

Secretary of State's consideration

7. The Secretary of State has carefully considered the Report and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Examination Report ("ER").
8. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the Report, and the reasons for the Secretary of State's

decision are those given by the ExA in support of his conclusions and recommendations.

Need and Relevant Policy for the Proposed Development

9. After having regard to the comments of the ExA set out in Chapter 4 of the Report, and in particular the conclusions set out in chapter 8, the Secretary of State considers 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 (NPS) EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy), which set out a national need for development of new nationally significant electricity network infrastructure of the type proposed by the Applicant. The Secretary of State is satisfied that there is a need for this development.
10. In Chapter 5 of the Report the ExA also 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) ("the Habitats Regulations") and the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007 (as amended) ("the Offshore 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. The Habitats Directive provides for the designation of sites, known as Special Areas of Conservation ("SACs") for the protection of habitats and species of European importance and Council Directive 2009/147/EC on the Conservation of Wild Birds ("the Birds Directive") for sites for the protection of rare and vulnerable birds and for regularly occurring migratory species, called Special Protection Areas ("SPAs") – those sites designated in the United Kingdom are collectively referred to in this letter as "European sites". The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for listing of wetlands of international importance – Ramsar sites. The UK Government policy is to afford Ramsar sites in the United Kingdom the same protection as European sites and in this context, the Secretary of State has taken policies into account in assessing potential adverse impacts.
11. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has also had regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when considering this Application.
12. Subject to the qualifications explained in the paragraphs below about drafting modifications to the Order, the Secretary of State agrees with the ExA's conclusions set out in Chapter 8 of the Report.

Marine Management Organisation (“MMO”) Monitoring Fees and Charges

13. The Secretary of State notes that the MMO requested that provisions be included in the deemed marine licences (“DMLs”) to allow them to charge fees for the review of monitoring reports submitted in response to the conditions in the DMLs. The ExA noted that the current practice of the MMO is to charge for such monitoring under licences it approves directly (ER 7.55) and concluded that it would be appropriate to include in the Order conditions which would permit the MMO’s reasonable expenses to be charged. However the Secretary of State notes that the ExA acknowledges that this conclusion was based on the evidence presented during the examination and that it had since come to their attention that a Public Bodies (Marine Management Organisation) (Fees) Order had been laid in Parliament in draft which, if approved, would allow the MMO to charge for monitoring in connection with a DML issued within a DCO (ER 7.61). The ExA also noted that if that Order were to come into force before a decision is made by the Secretary of State, then the Secretary of State may consider it unnecessary to incorporate such conditions in the Order.
14. The Public Bodies (Marine Management Organisation) (Fees) Order 2014 No 2555 was made on 14 September 2014. The Secretary of State does not consider that it would be reasonable, therefore, to impose a project specific fee regime when legislation exists in respect of fees which the MMO can charge for monitoring. The Secretary of State has therefore removed the provisions included in the draft Order at Appendix 4 of the ExA’s report that would allow the MMO to charge fees for the review of monitoring reports.

Air Traffic Services

15. The Secretary of State notes that there is an outstanding objection from the National Air Traffic Service (“NATS”) pending the agreement of mitigation measures to protect their interests relating to radar at St Annes and Lowther Hill. The Secretary of State also notes that at the close of the Examination, there was also an outstanding objection from the Defence Infrastructure Organisation (“the DIO”) (representing the Ministry of Defence (“MoD”) pending the agreement of mitigation measures to protect their interests relating to radar at Warton Aerodrome (ER 4.183) but that this has subsequently been withdrawn as set out below in paragraph 43 - 44. With regards the outstanding objection from NATS, the Secretary of State is satisfied that there is a requirement included in the Order to protect the interests of NATS. This requirement means that if mitigation is not agreed between the Applicant and NATS, the Development will not be able to proceed.
16. The Secretary of State notes that the Isle of Man Airport (“IoM Airport”) and Isle of Man Government (“IoMG”) (collectively known as the Isle of Man authorities (“IoMA”) also raised concerns during the examination about the

impact of the proposed Development on air traffic services provided to aircraft approaching Isle of Man ("IoM") airspace, and sought to include mitigation proposals in the Order similar to those proposed for MOD and NATS.

17. Whilst the airspace above the site of the proposed wind turbines is uncontrolled airspace, meaning that radar services are not required to be used or provided in this area (ER 4.196), both the IoM Airport and Warton aerodrome do offer such services during their operational hours. The Secretary of State notes that the IoMA were therefore concerned (ER 4.198) that the Development would result in a reduction in the service IoM Airport currently provides and is seeking to provide to aircraft in the vicinity of the Development. This issue and the concerns of the IoMA were considered in detail during the examination by the ExA as set out in paragraphs 4.194 – 4.237 of the Report.
18. The ExA noted (ER 4.213) that the IoMA's main concern was with regard to flights from Blackpool to the IoM that followed the Civil Aviation Authority's ("CAA") designated advisory flight route W2D. This route overlaps with a section of the southern part of the proposed wind farm. However, the ExA also noted that a limited amount of traffic used the W2D airway and that the CAA had advised that by the end of 2014 this advisory flight path was likely to be disestablished (ER 4.224).
19. The ExA concluded that they had found no substantive evidence to support the concerns of the IoMA that the proposed Development would have a significantly adverse impact on the provision of radar services to aircraft approaching the IoM. It was noted that the proposed wind turbines would be located in airspace where there is no general safety requirement for radar services to be utilised or provided and that if there is an impact then increased flexibility of routing, following disestablishment of W2D, provides scope for aircraft operators to use the IoM Airport radar services if they wish (ER 4.232).
20. The Secretary of State has considered the ExA's analysis and conclusion on this matter as well as the requirements set out in NPS EN-1 (paragraph 5.4). Whilst the Secretary of State acknowledges the concerns raised by the IoMA he agrees with the ExA's view that there is no substantive evidence to support the concerns of the IoMA that the proposed wind farm would have a significant impact on the provision of radar services to aircraft approaching the IoM. The Secretary of State notes the ExA's conclusion (ER 4.233) that there is no evidence that the Development in isolation will compromise the provision of safe or efficient air services to the IoM.
21. The Secretary of State notes that the IoMA requested that the Order included provision for mitigation comparable to that being provided for at Warton Aerodrome (ER 4.234), and the reservations expressed by both the Applicant and the ExA about this. The Secretary of State also notes and

agrees with the ExA that there is little in the way of evidence to support the view that a requirement as proposed by the IoMA is necessary or reasonable (ER 4.237). The Secretary of State, therefore, agrees with the ExA and sees no case for an additional mitigation requirement.

22. The Secretary of State notes that that the IoMA highlighted that their concerns were even greater when the Development was considered in combination with possible development in the North East Potential Development Area ("NEPDA"). This matter is considered below at paragraphs 23-25.

North East Potential Development Area (NEPDA)

23. Concerns were raised by the IoMA about the impact the proposed Development could have in combination with other development that might take place in the NEPDA. With regards to the impact on radar services, the IoMA were concerned that the impact resulting from the Development would increase if within the NEPDA further wind turbines were constructed (ER 4.203). Concern was also raised in relation to shipping interests with regards the cumulative impact of the proposed Walney extension alongside the potential development of the NEPDA. In particular, concerns were expressed around the proximity of the two potential development sites and there being inadequate sea space that could lead to cancellations and delays to services in adverse weather (ER4.401). A particular concern was raised by the Isle of Man Steam Packet Company (IoMSPC) about the need for flexibility of routing options during adverse weather conditions (ER 4. 403) and impacts on journey times should they need to route around the NEPDA. Concerns were also raised by a number of other interested bodies, including the Maritime and Coastguard Agency and the British Chamber of Shipping, at an open floor hearing held on the Isle of Man (ER 4. 406).
24. The ExA having noted these concerns concluded (ER 4.407) that, in the absence of any specific plans for the development of the NEPDA, that it was not possible to reach a useful conclusion now on cumulative impacts but that such impacts would be fully taken into account should particular proposals be brought forward for the NEPDA.
25. The Secretary of State notes that the Applicant has advised in a late representation received after the close of the examination that a decision has recently been made by themselves and Centrica, its 50/50 joint venture partner in Celtic Array Limited, to cease development in the Round 3 "Irish Sea" Zone, which includes NEPDA, due to challenging ground conditions. The representation also sets out that The Crown Estate does not intend to re-offer the Irish Sea Zone back to the market. See paragraphs 49-62 below for the Secretary of State's consideration of this late representation.

Cable laying under the A683, Lancashire

26. The route of the proposed export cables crosses the A683 to access the electricity connector substation to the north of that road. The ExA noted that the Applicant's Environmental Statement set out that the width of the road offered the potential for single lane running to enable cable system laying by open cut trench as an appropriate method whilst also raising the possibility of using horizontal directional drilling ("HDD").
27. The Secretary of State notes that Lancashire County Council as the relevant highway authority stated that this road is of strategic importance serving the port of Heysham and that the method for laying the cables should be HDD due to the impact on traffic that would result from single lane running (ER 4.451). The Applicant stated a willingness to use HDD and suggested a requirement for the Order that would reflect this (ER 4.454).
28. The ExA examined the proposed requirement (ER 4.455) taking into account the six tests for the imposition of conditions as set out in the National Planning Policy Framework ("NPPF") which states that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable on all respects (similar wording is also set out in National Policy Statement EN-1, paragraph 4.1.7). In doing so the ExA had particular regard to the extent of the potential problem that HDD was meant to address and examined the issue at the Issue Specific Hearing held on 26 March 2014.
29. The Secretary of State notes that the ExA considered that the extra cost of HDD, the limited length of time construction using the open cut trench approach would take and the limited traffic delay predicted, taking into account peak time traffic and traffic related to the Isle of Man ferry, and concluded that a requirement relating to the use of HDD at this site did not pass the tests set out in the NPPF, particularly with regards necessity and reasonableness (ER 4.462). The ExA did not therefore recommend that a requirement be included. The Secretary of State agrees with this conclusion whilst recognising that the absence of such a requirement does not prevent the Applicant from using HDD if they wish (ER 4.463).

Fisheries monitoring and mitigation

30. The Secretary of State notes that the MMO requested that provisions be included in the Order for monitoring the impact of the Development on *Nephrops* and elasmobranch fish. The ExA noted there were practical problems in monitoring fish and given natural variability, they had reservations about whether the proposed surveys would yield robust results (ER 4.271). The ExA therefore concluded that with no significant impact on these fish identified in the Applicant's Environmental Statement

the ExA did not feel it would be reasonable to require that such monitoring be undertaken. In reaching this conclusion the ExA took into account that NPS EN- 3 endorses requirements to measure and monitor such impacts and noted there are requirements within the Order for underwater noise monitoring during construction and mitigation measures to minimise impacts on fish where impacts were identified by the Applicant's Environmental Statement.

31. The Secretary of State agrees with the ExA's conclusion that it would not be reasonable to require that such additional monitoring be undertaken in relation to the identified species and that such a condition should not be included in the Order.
32. The Environment Agency (EA) also requested further mitigation to protect salmonid smolt from piling (ER 4.99-4.105). This was subject to detailed discussion during the examination. There was some uncertainty over the potential impact and the EA agreed a seasonal restriction on piling would be overly onerous (ER 4.102) and proposed instead a condition be included in the Order either for the payment of compensation or for a salmonid compensation scheme to be approved by the local planning authority. The ExA noted that they were satisfied that the Applicant's evidence is sufficiently robust to support its overall Environmental Statement conclusion of slight (non-significant) impact on salmonid fish. The Secretary of State notes that this view is supported by the Centre for Environment, Fisheries and Aquaculture Science. The ExA considered that neither of the schemes for compensation proposed in the condition passed the planning tests of reasonableness or necessity (ER 4.105).
33. On this basis the Secretary of State agrees with the ExA's conclusion and no mitigation other than soft start piling is included in the Order.

Belted Beauty Moth

34. The Secretary of State notes that a significant number of concerns were raised, including by the Royal Society of Protection of Birds (RSPB), individuals, Butterfly Conservation and the Lancashire Moth Group about the impact of cable installation under the saltmarsh at Middleton Sands on the belted beauty moth and that there was a suggestion that the saltmarsh should be avoided altogether and an alternative route for cable landfall identified. The belted beauty moth is a UK and Local Biodiversity Action Plan (BAP) species and in England it is listed on Section 41 of the Natural Environment and Rural Communities Act, 2006. The Secretary of State notes that the Applicant proposes using HDD to install the cable by drilling under the saltmarsh to minimise habitat disturbance. The ExA noted that having regard to EN-3 (paragraph 2.6.81) in relation to the installation of cable route in an intertidal area, the selection process for the chosen cable route was considered thorough (ER 4.150). The ExA noted that no

permanent disturbance effect to the belted beauty moth was anticipated from the use of HDD (ER 4.151).

35. The ExA noted however that there is still risk from HDD with regards drilling muds (bentonite) breaking out above the surface of the saltmarsh and smothering moths at all life stages. The Secretary of State notes that this risk is low (ER 4.152) and that requirements are included in the Order to mitigate this risk. Natural England confirmed that these mitigation measures will provide a better understanding of the impact of HDD on belted beauty moths during these operations and allow further mitigation to be provided if necessary.
36. The Secretary of State noted that Butterfly Conservation did suggest a further mitigation measure that HDD takes place between August and February so if bentonite breakout did occur, it would impact on the most robust life stage for the moths (ER 4.156). However the ExA noted this was not possible as work was already restricted from October to March to prevent a likely significant effect on overwintering birds a feature of the Morecambe Bay SPA. The Secretary of State notes Natural England's evidence that works in the summer months would allow the rapid recovery of saltmarsh plants. The ExA concluded that they considered adequate safeguards exist to ensure there would be no significant impact on the belted beauty moth colony and that the chosen method of cable installation and the Order's requirements and conditions provided significant mitigation to control this (ER 4.160).
37. The Secretary of State agrees with the conclusions reached by the ExA and is satisfied that the requirement to use HDD within this sensitive area at Middleton Sands for installing cables will not have a significant impact on the belted beauty moth colony.

Habitats Regulation Assessment (HRA): European Sites and Protected Species Impacts

38. Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) and Regulation 25 of the equivalent Offshore Regulations requires the Secretary of State to consider whether the proposed Development would be likely to have a significant effect on a European Site as defined in the Habitats Regulations. 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 AA takes into account the impacts of the proposed project alone and also in combination with other plans and projects.
39. Officials have carefully considered the evidence submitted during the examination and the ExA's recommendation. The Secretary of State has taken account of the ExA's conclusions, the Report on the Implications for European Sites, the Applicant's Environmental Statement and other

information available and considers that likely significant effects arising from the proposed Development when considered alone and in combination cannot be excluded in relation to those European sites listed in paragraph 41 below. The Secretary of State notes, however, the ExA's view (ER 5.74) that it has been shown beyond reasonable scientific doubt that there is not likely to be a significant adverse impact on any European site so that an Appropriate Assessment is not needed. The Secretary of State considers, however, that there are potential pathways for impacts on European sites that are not trivial and has therefore undertaken an AA as required under the Habitats Regulations to consider the effects of the Development alone and in combination alongside other operational, consented and reasonably foreseeable projects (subject to a current planning application) as regards the likely impact upon the integrity of the European Sites listed below in paragraph 41.

40. The Secretary of State is satisfied that sufficient information has been provided to inform a robust assessment as required under the Habitats Regulations. The Secretary of State considers that likely significant effects could not be ruled out for breeding Lesser Black-Backed Gull, Herring Gull, Manx Shearwater and intertidal mudflats and sandflats as a result of the Development alone. These are features of five European sites and an additional two sites may be affected when the Development is considered in combination with other plans and projects.

41. The sites are located in England, Wales and Northern Ireland and are:

- Bowland Fells SPA
- Ribble and Alt Estuaries SPA / Ramsar
- Morecambe Bay SPA / Ramsar
- Morecambe Bay SAC
- Aberdaron Coast and Bardsey Island SPA (in combination only)
- Copeland Islands SPA (in combination only).
- Skokholm and Skomer SPA

42. A copy of the Secretary of State's HRA is published alongside this decision letter. The Secretary of State is confident, however, that, with the mitigation measures recommended by the ExA included in the Order, there will be no adverse effect on the integrity of any of these European sites. This view is supported by the ExA's report, the Applicant and the Statutory Nature Conservation Bodies.

Other Matters

Representations received after the close of the ExA's examination of the Application

43. As set out above at paragraph 15 at the close of the examination there was an outstanding objection from the DIO on behalf of MoD in consultation

with BAE Systems (Operations) Limited (“BAE Systems”), the operator of Warton Aerodrome, pending the agreement of mitigation measures to protect their interests relating to radar at Warton Aerodrome (ER 4.182). In a letter to the Secretary of State dated 4th November 2014, DIO advised that an agreement dated 4th November 2014 (“the Agreement”) had been entered into between MoD, BAE Systems, DONG Energy Walney Extension (UK) Limited and DONG Energy Wind Power A/S to secure suitable planning requirements and the implementation of an identified and defined radar mitigation solution in relation to the proposed Development and its impact on the ATC Radar at Warton Aerodrome in the event that the Development were to be implemented. The MoD, confirmed that having consulted with BAE System, it was content to withdraw the MoD’s objection to the Application, subject to the terms of the Agreement, and the imposition in the Order of the Requirement in the form agreed with the Applicant, subject to the approval of the Secretary of State.

44. The Secretary of State agrees to the inclusion in the Order of the Requirements specified by the MoD (with a slight modification as indicated below at paragraph 71). The Secretary of State is therefore satisfied that there are no further issues relating to this representation that need to be addressed.
45. Two representations dated 5 August 2014 were received from the Applicant after the close of the examination. The Secretary of State, in a letter dated 19 September 2014, sought comments from interested parties on these two representations and in a letter dated 6 October 2014, sought comments from interested parties in relation to the responses received.
46. The first representation informed the Secretary of State that a Statement of Common Ground had been entered into by the Applicant and the MMO on 4th August 2014. The letter requested the Secretary of State to consider including a number of amendments to the Order within the scope of what was assessed in the Applicant’s Environmental Statement in order to correct some discrepancies in relation to the areas and volumes of cable protection and to include the option of the monopile foundations for the installation of the offshore substations. The letter also set out the Applicant’s concerns with regards to the inclusion of a requirement in the Order that would allow the MMO to charge for the review of monitoring reports.
47. The MMO confirmed by a letter of 3 October 2014 that it had no further comments to make.
48. The Secretary of State notes that no other comments were received on this matter from any other interested parties during the consultation. The Secretary of State is satisfied that the proposed amendments to the Order do not materially change the Application as applied for and therefore

accepts these changes. The Order has been modified accordingly. The comments relating to proposed charges by the MMO, is addressed above at paragraphs 13-14.

49. The second representation informed the Secretary of State that a decision had recently been made by DONG Energy and Centrica, to cease development of offshore wind farms in the NEPDA due to challenging ground conditions. This is addressed in paragraph 23-25 above.
50. In respect of the second representation, the Secretary of State received responses from the UK Chamber of Shipping, the Isle of Man Steam Packet Company Limited ("IoMSPC"), the Isle of Man Chamber of Commerce ("IoMCC"), Mr John Pennington on his own behalf and on behalf of TravelWatch Isle of Man ("Mr Pennington/TWIoM"), and the Isle of Man Government ("IoMG").
51. The UK Chamber of Shipping stated that the decision relating to the NEPDA, significantly reduced concerns over the cumulative impacts of proposed wind farm development on navigation in the Irish Sea and specifically that the decision removed the possibility of an unsafe shipping corridor or gap being created between the proposed Development and the NEPDA. The UK Chamber of Shipping stated that they were content that the navigational safety impacts of the Development in isolation will be tolerable but noted that this position was based on the assumption that no future projects will be proposed in the former NEPDA.
52. The IoMSPC stated that it did not object to the Development in isolation. Its principal objection was with respect to cumulative impacts with other developments specifically the NEPDA. If that zone was not to be developed and there were to be no developments in close proximity to the south of the Development, then this concern would be removed. The IoMSPC also queried whether the Applicant would be responsible for paying compensation to passengers and freight customers in the event that sailings were cancelled due to bad weather which, in the absence of the Development, would have been routed through the site of the Development as a bad weather route. The IoMCC and Mr Pennington/TWIoM endorsed the IoMSPC's comments. Mr Pennington/TWIoM reiterated concerns about delays and cancellations to sailings. The UK Chamber of Shipping also noted that some shipping operators, including the Isle of Man Steam Packet Company, remained concerned over the potential commercial impacts of the Development, particularly with regard to the possibility of passenger compensation claims being made for sailing cancellations.
53. The IoMG concurred with the representation made by the IoMSPC. It confirmed that it would not object to the Development in isolation if its air and sea navigation and radar concerns were addressed. It reiterated that, in respect of aviation, the Development would limit radar services that could be offered by IoM Airport. It stated that in the short term, the fact that

the NEPDA is not to be developed might allay the IoMG's concerns about cumulative impact but IoMG noted that new proposals might come forward for that zone which would reignite its concerns.

54. The Applicant wrote to the Secretary of State in response to the IoMSPC's representation to offer its view of the reasons why no compensation would be payable in the circumstances outlined by the IoMSPC. It added that its own evidence showed that bad weather routing was to the south and west of the Development.

55. The IoMSPC wrote in response to the Applicant's reply confirming that it was not asking for compensation for itself but for customers affected when a sailing could not take place because of bad weather but which could previously have been routed through the site of the Development. The IoMSPC highlighted that there had been two weather routings through the Development site this year (2014).

56. The Applicant responded stating that they had nothing further to add.

57. The Secretary of State has carefully considered all of the representations received. He notes that whilst the decision of the Applicant and Centrica to cease development of offshore wind farms in the NEPDA has for the time being alleviated some cumulative impact concerns, the consultation respondents remained concerned about possible development of that area at some point in the future. The Secretary of State agrees with the ExA (ER 4.407) that cumulative impacts would be fully taken into account should particular proposals be brought forward for the NEPDA and are not a reason for refusing consent to the Development. The Secretary of State notes the IoMG maintained its concerns about impacts on the level of radar service that can be offered by IoM Airport, but in the absence of any new evidence the position remains as set out in paragraphs 24 above.

58. In respect of the issue of compensation payable for bad weather cancellations which would otherwise have been able to route through the Development site, the Secretary of State notes that Article 20(4) of Regulation EC 1177/2010 on maritime passenger rights provides as follows:

“Article 19 [which provides for passengers to be compensated for delay] shall not apply where the carrier proves that the cancellation or delay is caused by weather conditions endangering the safe operation of the ship or by extraordinary circumstances hindering the performance of the passenger service which could not have been avoided even if all reasonable measures had been taken.”

59. The Secretary of State considers this exemption applies whenever a service cannot be operated because of such conditions. The fact that an

alternative safe route which was previously available in some cases of bad weather is no longer available, for reasons outside the operator's control, does not prevent the operator relying on the exemption if, on the facts, the adverse weather provision is met.

60. The Secretary of State has considered the possible socio-economic effects that this might have on users of ferry services to and from the Isle of Man who may not be compensated for bad weather cancellations in circumstances where, in the absence of the Development, sailings would have been routed through the site of the Development. In view of the relatively small number of sailings likely to be affected, the Secretary of State does not consider that this possible impact outweighs the overall benefits of the Development.
61. The Secretary of State received comments from the Managing Director of Port Millom, setting out what the Development could potentially bring to the harbour in Millom and to the town in general, particularly in relation to job creation.
62. The Secretary of State also received responses from the British Pipelines Agency Limited, the Highways Agency, the Civil Aviation Authority and the Belgian Federal Directorate-General for Environment stating that they did not have any comments.

Crown Land

63. Section 135 of the Planning Act 2008 requires consent from a relevant Crown Authority for inclusion of any provision applying in relation to Crown Land. The Secretary of State notes that there are three plots of land that are subject to Crown interests. One plot is land off the coast owned by The Crown Estate and the other two plots are both foreshore and seabed and owned by The Duchy of Lancaster.
64. The ExA noted that The Crown Estate and The Duchy of Lancaster have confirmed that they are satisfied with the provisions in the ExA's draft Order that apply in relation to Crown Land. The ExA concluded that there are no extant barriers under s135(1) or s135(2) to the Secretary of State making the recommended Order (ER 6.86- 6.88). The Secretary of State does not seek to amend any provisions relating to Crown Land and so is satisfied that there are no issues relating to The Crown Estate or The Duchy of Lancaster that are outstanding or that would prevent the Development from going ahead.

Compulsory Acquisition

65. The Secretary of State notes that as part of the Order the Applicant seeks to acquire the freehold over one plot of land, new permanent rights over 37 plots of land and temporary possession of 63 plots of land. The land and

rights for which compulsory acquisition is sought relate to electrical grid connection land and includes foreshore, saltmarsh, tracks, highway, subsoil and amenity land but is mainly agricultural land. Some of the parcels of land are common or open space land which is defined as Special Category Land (ER 6.90-6.108) and statutory undertaker land (ER 6.109-6.140).

66. The ExA sets out their consideration of the matters relating to compulsory acquisition in section 6 of the Report.
67. The ExA highlighted that there were no outstanding objections from affected parties and that all have reached agreement (ER 6.174). The ExA concluded that the requests for compulsory acquisition powers meet the relevant tests for approving such powers, and there is a compelling case which is in the public interest (ER 8.8). The Secretary of State is satisfied with the ExA's analysis of the issues and that the necessary requirements for granting compulsory acquisition powers have been met.

Secretary of State's conclusions and decision

68. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Application, given the added contribution that it would make to the production of renewable energy and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme.
69. The Secretary of State has therefore decided to accept the ExA's recommendation in paragraph 8.10 of the Report to make the Order granting development consent and imposing the requirements as proposed by the ExA, but subject to the modifications described in paragraphs 70-76 below. In reaching this decision, he has had regard to the Report as amended by the Errata sheet referred to in paragraph 4 above, the late representations 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 also 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.

Modifications to the Order

70. The Secretary of State has made amendments to the ExA's recommended Order in Annex D of the Report in accordance with the amendments requested by the Applicant in their late representation. The Secretary of State's consideration of this representation is set out above in paragraphs 46-48.

71. The Secretary of State has made amendments to the ExA's recommended Order in Annex D of the Report with regards to Schedule 1, part 3 article 12. This section relates to the mitigation measure for Warton Aerodrome. The amendment is the inclusion of a definition for the "approved mitigation" to ensure that the requirement for the Applicant to provide mitigation measures is limited to the agreed mitigation at the time of the requirement being discharged so that if the owners of this facility change during the lifetime of this project, after the requirement has been discharged, it will not be necessary for the Applicant to provide new mitigation measures to any new owner, over and above what has already been provided.
72. The Secretary of State has amended the requirement in article 5 of the ExA's recommended Order in Appendix 4 to the Report that would require the Applicant to obtain the prior approval of the MMO before the Applicant could transfer the benefit of either of the DMLs, which form part of the Order, to another party. The Secretary of State proposes instead that the provision should require the consent of the Secretary of State in consultation with the MMO. The Secretary of State considers that the operational interests of the MMO 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 MMO as well as the Secretary of State in circumstances where it wished to transfer the benefit of the Order (which would include the DMLs).
73. The Secretary of State has removed the requirement in the ExA's recommended Order in Annex D of the Report with regards to the MMO having powers to charge fees for services related to monitoring. This is covered in more detail above at paragraphs 13-14.
74. The Secretary of State has removed article 11 in Schedule 12, part 1 (Protective Provisions) of the ExA's recommended Order in Annex D of the Report. This section relates to the use of arbitration in the event that a dispute arises between the Environment Agency and the drainage authority. The Secretary of State however notes that Article 12 of the DCO provides an adequate arbitration procedure which would allow consultation with the Secretary of State for Energy and Climate Change if necessary. The Secretary of State is therefore of the view that the provision at Schedule 12, part 1, Article 11 is unnecessary.
75. The Secretary of State has removed Parts 4 and 5 of Schedule 12 (Protective Provisions). These sections relate to confidential agreements entered in to by the Applicant with National Grid and Lancashire County Council. If the parties have entered into commercially binding agreements, then they can only be varied or amended by agreement with the parties in accordance with the terms of those agreements. On that basis the Secretary of State considers that to include such provisions in the Order is legally unnecessary and inappropriate

76. In addition to the above, the Secretary of State has decided to make various minor changes to the form of the draft Order as set out in Appendix D to the Report produced by the ExA 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.

Challenge to decision

77. 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

78. 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 of National Infrastructure Consents

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the 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 Walney Extension Offshore Wind Farm 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/north-west/walney-extension-offshore-wind-farm/>

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)