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22 January 2021

Dear Mr Wilson,

## **PLANNING ACT 2008**

### **APPLICATION BY DOGGERBANK OFFSHORE WIND FARM PROJECT 3 PROJCO LIMITED FOR A NON-MATERIAL CHANGE TO THE DOGGER BANK TEESSIDE A AND B ORDER 2015**

1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the application (“the Application”) which was made by Doggerbank Offshore Wind Farm Project 3 Projco Limited (“the Applicant”) on 4 June 2020 for a change which is not material to the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (“the 2015 Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008 (“the 2008 Act”). 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) Regulations 2011 (as amended) (“the 2011 Regulations”).
2. The original application for development consent under the Planning Act 2008 was submitted to the Planning Inspectorate by the Forewind consortium on 28 March 2014 and was granted development consent on 4 August 2015. Consent was granted for the construction and operation of two offshore wind farms of up to 1,200MW each, with associated offshore infrastructure, on the Dogger Bank in the North Sea and export cables with a landfall at Marske-by-the-Sea and associated onshore works to enable export of the electricity generated to the National Grid electricity transmission system.

3. The Secretary of State notes that since the 2015 Order was granted, the Dogger Bank Teesside A and B project has been reconfigured so that there are now separate wind farm projects operated by different parts of the former Forewind consortium: the Dogger Bank Teesside A project is now operated by Dogger Bank Offshore Wind Farm Project 3 Projco Limited; and Dogger Bank Teesside B is now known as Sofia and is operated by Sofia Offshore Wind Farm Limited.
4. On 11 August 2020 the Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) Order 2020 removed the permitted maximum generating capacity of the Teesside A offshore wind and altered the diameter of the rotor blades. On 30 November 2020 a further non-material change was made which allowed for the two parts of the project to be considered separately and for the discharge and enforcement of the relevant requirements on a project specific basis.
5. The Applicant is now seeking consent to amend the 2015 Order:
  - i. to increase the maximum hammer piling energy for the monopole foundations for the wind turbines from 3,000kJ to 4,000kJ; and
  - ii. to clarify that inter-array cables may be laid directly between the turbine generators and the offshore platforms. This change aligns with the intention of the original Order and these connections were assessed within its Environmental Statement.

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

6. The Secretary of State has given consideration to whether the application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the 2015 Order as originally made and as subsequently amended.
7. 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.
8. So far as decisions on whether a proposed change is material or non-material, guidance produced by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government ("MHCLG")), the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Guidance")<sup>1</sup>, makes the following points. First, given the range of infrastructure projects that are consented through the Planning Act 2008, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material. Second, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change, namely:
  - (a) whether an update would be required to the Environmental Statement (from that at the time the original development consent order was made) to take account of likely significant effects on the environment;

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<sup>1</sup> <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

- (b) whether there would be a need for a Habitats Regulations Assessment (“HRA”), or a need for a new or additional licence in respect of European Protected Species (“EPS”);
- (c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing development consent order; or
- (d) whether the proposed change would have a potential impact on local people and businesses.

Third, that although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.

9. The Secretary of State has considered the changes proposed by the Applicant against the four matters given in (a), (b) (c) and (d) above:
- (a) The Applicant supplied a document entitled ‘NMC Application: Environmental Report’ and supporting technical appendices (collectively “the Supporting Statement”) which provides further environmental information and concludes that the changes will not result in any greater impacts than those already assessed in the original Environmental Statement for the 2015 Order. In the light of the analysis supplied by the Applicant and the responses to the consultation, the Secretary of State concludes that an update to the Environmental Statement is not required.
  - (b) In respect of the HRA, the Secretary of State considers that the need for an HRA (and, if necessary, an Appropriate Assessment (“AA”) and any further environmental information required to carry out that assessment) is not necessarily of itself determinative of whether an application to change a development consent order should be considered material.

In the case of the Application, the Secretary of State has considered the potential impacts of the Development in its amended format on the Harbour Porpoise Southern North Sea Special Area of Conservation (“SNS SAC”). Following the designation of the SNS SAC in 2019, BEIS and the Marine Management Organisation published a Review of Consents HRA<sup>2</sup> which assessed the effects of certain existing consents, including Teesside A, on the SNS SAC. This 2020 HRA considered a proposed hammer energy for Teesside A of a maximum of 5,500 kJ (therefore greater than the 3,000 kJ assessed in the original 2015 HRA in relation to the then SNS draft SAC, and greater than the 4,000 kJ proposed by this change application). That HRA concluded that based on the results from the noise modelling and the use of the SNCB guidance<sup>3</sup> on assessing effects on the SNS SAC, pile-driving during the construction of Teesside A offshore wind farm would not have an adverse effect upon the integrity of the SNS SAC either alone or in combination with other plans and projects. The conclusions of no adverse effect on integrity relied upon the mitigation measures secured through the Deemed Marine Licence (“DML”) including a project-specific Marine Mammal Mitigation Protocol (“MMMP”) and the addition of a pre-

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<sup>2</sup> <https://www.gov.uk/government/publications/review-of-consented-offshore-wind-farms-in-the-southern-north-sea-harbour-porpoise-special-area-of-conservation>

<sup>3</sup> <http://data.jncc.gov.uk/data/2e60a9a0-4366-4971-9327-2bc409e09784/JNCC-Report-652-FINAL-WEB.pdf>

construction condition requiring a Site Integrity Plan (“SIP”) to ensure that the assumptions used in the Review of Consents HRA would not be exceeded.

The Secretary of State has concluded that, given the nature and impact of the change proposed and the advice of Natural England and the Marine Management Organisation as well as the representations made by other parties, there will be no new or materially different likely significant effects on any Natura 2000 site as a result of the proposed changes when compared to the effects set out in the Environmental Statement for the development authorised by the 2015 Order, and as assessed in the SNS SAC Review of Consents HRA. Therefore, the Secretary of State is satisfied that an Appropriate Assessment is not required.

- (c) The proposed changes do not entail any new compulsory acquisition of land.
  - (d) The potential impacts on local people and businesses are no greater than those that arise from the development permitted by the 2015 Order.
10. The Secretary of State therefore concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggest that the proposed changes are material changes. He has had regard to the effects of the changes, together with the previous changes made to the 2015 Order in 2019 and 2020, and has also considered whether there are any other circumstances in this particular case which would lead him to conclude that the proposed change is material, but has seen no evidence to that effect.
11. The Secretary of State is therefore satisfied that the change proposed in the application is not material and should be dealt with under the procedures for non-material changes.

## **Consultation**

12. The Applicant publicised the application in accordance with regulation 6 of the 2011 Regulations and on 10 June 2020 consulted the persons required by regulation 7 of the 2011 Regulations, in the manner prescribed. The consultation closed on 29 July 2020.
13. The Application was also published for two consecutive weeks in the local press and in Fishing News and made publicly available on the Planning Inspectorate’s website, such that there was the opportunity for anyone not individually notified to submit representations to the Planning Inspectorate.
14. Representations were received from the Maritime and Coastguard Agency, the Marine Management Organisation, Natural England, The Crown Estate, and The Wildlife Trusts.
15. The Wildlife Trusts’ response was the only objection, focussing on the potential impacts of the increased hammer energy. Natural England and the Marine Management Organisation both commented on the assessment of the impacts of this increase. This issue is considered in the Environmental Impact Assessment below.
16. The Secretary of State notes that no objections were raised to the amendment to the Order to allow for cables to be run between the turbines and the offshore platforms.
17. The Secretary of State has considered the representations received in response to the consultation and does not consider that any further information needs to be provided by the Applicant or that further consultation of those already consulted is necessary.

## Environmental Impact Assessment

18. 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 the Environmental Statement for the development authorised by the 2015 Order as amended in 2019 and 2020.
19. The Secretary of State is satisfied that the Supporting Statement provided by the Applicant is sufficient to allow him to make a determination on the application.
20. The Secretary of State has considered the information provided and the views of consultees. The Secretary of State notes the concerns raised by The Wildlife Trusts about the adequacy of the information, the reliance upon the draft HRA for the Review of Consents of the Southern North Sea SAC, and the need for mitigation and monitoring of disturbance impacts in the Southern North Sea to be included as a condition for this project. As noted in paragraph 19 above, the Secretary of State is satisfied that sufficient information has been provided by the Applicant and that the proposed amendment will not lead to materially different effects than those assessed in the original HRA for the 2015 Order. The Secretary of State also notes that the Review of Consents for the Southern North Sea SAC, as well as its HRA, have now been published, and that the Applicant will put in place a Marine Mammal Mitigation Protocol and will also be required to produce a Site Integrity Plan, attached to the Project's Marine Licence by the Marine Management Organisation, before piling can commence.
21. The Secretary of State agrees with the Applicant's conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the Environmental Statement for the development authorised by the 2015 Order and as such considers that there is no requirement to update the Environmental Statement.
22. As there are no new significant effects or materially different environmental effects as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

## Habitats

23. The Secretary of State has considered the relevant and important policies in respect of the United Kingdom's obligations as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") and the Conservation of Offshore Marine Habitats and Species Regulations 2017 ("the Offshore Habitats Regulations"), which transpose the Habitats Directive (92/43/EC) into UK law. The Habitats Regulations and the Offshore Habitats 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 Natura 2000 site, as defined in the Habitats Regulations and Offshore Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations and regulation 28 of the Offshore Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the application if he has ascertained that it will not adversely affect the integrity of a Natura 2000 site.

24. The Secretary of State has considered the Supporting Statement submitted with the application, alongside the advice of Natural England and the Marine Management Organisation as well as the representations made by other parties, and is satisfied that the changes set out in the application will have no new or materially different likely significant effects on any Natura 2000 site when compared to the effects set out in the Environmental Statement for the development authorised by the 2015 Order and as assessed in the SNS SAC Review of Consents HRA. The Secretary of State is therefore satisfied that there is sufficient evidence to conclude that an Appropriate Assessment is not required.

## **General Considerations**

### Equality Act 2010

25. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sexual orientation; gender; gender reassignment; disability; marriage and civil partnerships;<sup>4</sup> pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
26. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010, and is satisfied that there is no evidence that granting this application will affect adversely the achievement of those objectives.

### Human Rights Act 1998

27. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

### Natural Environment and Rural Communities Act 2006

28. 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 amended development consent. The Secretary of State is of the view that biodiversity has been considered sufficiently in this application for an amendment to accord with this duty.

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

29. The Secretary of State has considered the ongoing need for the development. 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 for the UK to meet its energy and climate change objectives, there is a continuing need for the new electricity generating plants of the type proposed by the Applicant given

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

the contribution it will make to securing energy supply. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Energy White Paper, *Powering our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application. The Secretary of State considers, therefore, that the ongoing need for the Development is established and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.

30. The Secretary of State has considered the nature of the proposed changes, noting that they would have no additional significant environmental effects. He notes that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the 2015 Order as amended in 2019 and 2020. He concludes that the proposed change is not material. Having considered the effects of any change and the benefits of the change in facilitating the deployment of the Development, the Secretary of State has concluded that it would be appropriate and advantageous to authorise the proposed change as detailed in the application.
31. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed change to the 2015 Order as set out in the application. The Secretary of State is satisfied that the change requested by the Applicant is not a material change to the 2015 Order, and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the 2015 Order so as to authorise the change detailed in the application.

### **Modifications to the draft Order proposed by the Applicant**

32. Minor drafting corrections have been made by the Secretary of State to the draft Order proposed by the Applicant. These changes do not materially alter the terms of the draft Order. In addition amendments proposed by the order to Part 3 (Requirements) of Schedule 1 (Authorised Project) in paragraph 6(1) and proposed insertion of new paragraph 6(A) are not required. These modifications have previously been made by the Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) (No. 3) Order 2020.

### **Challenge to decision**

33. 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**

34. The Secretary of State's decision on this application is being notified as required by regulation 8 of the 2011 Regulations.

Yours sincerely,

*Gareth Leigh*

Gareth Leigh  
Head of Energy Infrastructure Planning



## ANNEX

### 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 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:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/dogger-bank-teesside-a-sofia-offshore-wind-farm-formerly-dogger-bank-teesside-b-project-previously-known-as-dogger-bank-teesside-ab/>

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)