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Dear Ms Hartfield

PLANNING ACT 2008

**PLANNING CONSENT APPLICATION – PROPOSED HORNSEA
OFFSHORE WIND FARM (ZONE 4) – PROJECT TWO**

1. Introduction

- 1.1 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:
- a) the report dated 16 March 2016 of the Examining Authority, a panel of four Examining Inspectors (“the Panel”) led by Professor John Glasson, on the application dated 30 January 2015 (“the Application”) by SMart Wind Limited (“the Applicant”) acting on behalf of Optimus Wind Limited and Breesea Limited for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Hornsea Offshore Wind Farm (Zone 4) – Project Two proposal;
 - b) representations received by the Secretary of State in respect of the Application; and
 - c) further consultation engaged in by the Secretary of State in respect of issues raised in the planning process and by the draft Order as submitted to the Secretary of State.
- 1.2 The Examination of the Application began on 16 June 2015 and was completed on 16 December 2015. The Examination was conducted on the basis of written

evidence submitted to the Panel, site inspections and discussed at hearings on 30 July; 15, 16 and 17 September; and 27, 28 and 29 October, 2015. A number of changes were made to the Application during the Examination.

- 1.3 The Order, as applied for, sought development consent under the 2008 Act for the construction and operation of up to two offshore wind farms located in the North Sea approximately 89km off the coast of the East Riding of Yorkshire (“the Development”) with a gross electrical output of up to 1,800MW and up to 360 wind turbines. The maximum number of turbines was reduced from 360 to 300 during the Examination (see paragraph 4.30 below). The Development would also comprise the following:
- a) up to six offshore high voltage alternating current (“HVAC”) collector substations and up to two offshore HVAC reactive compensation substations, or up to two high voltage direct current (“HVDC”) converter substations;
 - b) an offshore cable connection, consisting of up to eight subsea electrical circuits proceeding from the offshore HVAC collector substations, or up to two electrical circuits proceeding from the offshore HVDC collector substations, of approximately 150km in length extending in a south-westerly direction to the proposed landfall at Horseshoe Point, near North Coates village, in Lincolnshire;
 - c) onshore cables of approximately 40km in length connecting the offshore wind farm from the proposed landfall point at Horseshoe Point to the existing National Grid substation at North Killingholme (400kV) in the North Lincolnshire unitary authority, and up to two onshore electrical transmission stations (which may include facilities to convert the current to HVAC); and
 - d) authorised development including dredging, “compensation compounds”, landscaping, temporary roads and access tracks, and other works and apparatus as may be necessary for the construction of the Development.
- 1.4 Enclosed at Annex A to this letter is a copy of the Panel’s Report of Findings and Conclusions (“the Report”) and annexed errata sheet. The Panel’s findings and conclusions are set out in the Report, and the Panel’s summary of findings and conclusions are at section 11.

2. Summary of the Panel’s Report and Recommendations

- 2.1 The Secretary of State notes that the Panel’s report included findings and conclusions on the following principal issues:
- Nature of development and relationship with Hornsea Project One;
 - Construction impacts;
 - Ecology – offshore;
 - Ecology – onshore;

- Navigation and marine (i.e., shipping routes, radar, marine safety issues, impacts on ports, marine archaeology, oil, gas and dredging interests and transboundary issues);
 - Aviation;
 - Fish and fisheries;
 - Socio-economics;
 - Landscape and heritage;
 - Content of Development Consent Order ;
 - Monitoring, mitigation and management plans; and
 - Compulsory Acquisition (“CA”).
- 2.2 The Panel recommended that the Secretary of State grants development consent for the Development in the form of the Order set out in the Report [ER 11.2.1].

3. Summary of the Secretary of State’s Decision

- 3.1 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. A copy of the Order is attached at Annex B, the Habitats Regulations Assessment at Annex C, and a note on the circumstance in which the Secretary of State’s decision can be challenged in Annex D. This letter with the enclosed Annexes A, B and C constitutes both the statement of reasons for the Secretary of State’s decisions 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”).

4. Secretary of State’s Consideration of the Application

- 4.1 The Secretary of State has carefully considered the Report, the representations made in respect of the Application and all other material considerations. The Secretary of State’s consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Examination Report (“ER”).
- 4.2 The Secretary of State has had regard to the National Policy Statements referred to in paragraph 4.4 below, the Local Impact Reports (“LIR”) submitted by North Lincolnshire Council (“NLC”), North East Lincolnshire Council (“NELC”) and East Lindsey District Council (“ELDC”), the relevant local plans and to all other matters which he must have regard to or considers to be important and relevant to his decision as required by section 104 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making his decision, the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to his decision.

- 4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the Panel as set out in the Report, and the reasons for the Secretary of State's decision are those given by the Panel in support of their conclusions and recommendation.

Need for the Proposed Development

- 4.4 In making his decision, the Secretary of State has had regard to the Energy National Policy Statements ("NPS") EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure) and NPS EN-5 (Electricity Networks Infrastructure) which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. The case for the Development is considered throughout the Report, and after considering in particular the Panel's conclusions in paragraph ER 4.4.1 and ER 11.1.3, the Secretary of State is satisfied that the decision to make the Order would be consistent with the Government's policy objectives as set out in EN-1, EN-3 and EN-5 and that there is a need for the Development.
- 4.5 In addition, the Secretary of State notes that a range of issues related to socio-economic impacts were examined by the Panel during its consideration of the Application. The Panel concluded that the Development meets the socio-economic considerations set out in NPS EN-1 [ER 5.12.26]. The Secretary of State agrees with the Panel's conclusions in this matter.

Archaeology

- 4.6 The Secretary of State notes that at the end of the Examination, there was disagreement between the Applicant, NLC and Historic England ("HE") as to whether or not the evidence that has been assembled by the Applicant in relation to non-designated archaeological assets was sufficient for assessing the impact on these potential assets [ER 5.10.24]. To address these concerns, the Panel suggested an amendment to Requirement 5 (archaeology landward of mean low water springs) of Part 3 of Schedule 1 to the draft DCO [ER 5.10.27], and recommended that the Secretary of State consult the Applicant, HE and NLC on their proposed amendment. In their response to the Secretary of State's consultation of 7 April 2016, NLC and HE confirmed that, subject to minor amendments to the wording as agreed with the Applicant and flagged in their response, the amendment to Requirement 5 would fully address their outstanding concerns. The Secretary of State has therefore amended Requirement 5 accordingly.

Compulsory Acquisition Powers

- 4.7 The Secretary of State has considered the compulsory acquisition ("CA") powers sought for land, the creation of new rights over land and the extinguishment or suspension of rights over land of both a permanent and temporary nature, for the purpose of constructing, operating and maintaining the Development. The Panel sets out its consideration of matters relating to CA in section 9 of the report.

- 4.8 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The Panel was satisfied [ER 9.7.20] that the statutory tests in section 122 are met. The Secretary of State has considered the CA powers sought by the Applicant and agrees with the Panel's conclusions for the reasons given by the Panel. The Secretary of State's consideration of the Human Rights Act 1998 is set out below.
- 4.9 The Secretary of State notes also that funding for compensation in respect of the exercise of powers of compulsory acquisition, etc. in articles 18 to 28 of the Order will be secured by a guarantee under article 4.

Crown Land

- 4.10 Section 135(1) of the 2008 Act provides that an order granting development consent "may include provision authorising the compulsory acquisition of an interest in Crown land only if (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown; and (b) the "appropriate Crown authority" consents to the acquisition. In the Application, the Applicant seeks powers to create and compulsorily acquire rights over third party interests in Crown land of which the Crown Estate, the Defence Infrastructure Organisation and Highways England are the "appropriate Crown authority".
- 4.11 In a letter dated 20 October 2015 during the Examination, the Crown Estate indicated that inclusion of compulsory acquisition powers in respect of third party interests in plots in respect of which the Crown Estate is the appropriate Crown authority would have to be subject to the Crown Estate consenting to their exercise subsequent to the making of the DCO, stating that "any grant of... consent to the exercise of such compulsory acquisition powers will be at the [Crown Estate's] discretion". This was reflected in article 39(1)(b) of the recommended DCO, which made the exercise of compulsory acquisition powers by the Applicant in respect of third party interests in Crown land subject to the subsequent consent of the Crown Estate.
- 4.12 In a letter dated 12 July 2016, the Secretary of State set out his view that section 135(1) prevents the Secretary of State making a development consent order which includes provision authorising the compulsory acquisition of a known interest in Crown land, being an interest held otherwise than by or on behalf of the Crown, unless the "appropriate Crown authority" has consented to the acquisition. The Secretary of State also explained that he does not consider that article 39(1)(b) of the recommended Order, which enables the "appropriate Crown authority" to give consent after the making of a development consent order, is consistent with the requirements of section 135(1). The Secretary of State noted that, whilst previous practice may have varied, this approach was consistent with DCLG guidance on the operation of section 135, which is available at:
- <https://www.gov.uk/government/publications/planning-act-2008-procedures-for-the-compulsory-acquisition-of-land>

- 4.13 In the same letter, the Secretary of State indicated that he proposed to replace article 39(1)(b) of the recommended Order with a new provision, the effect of which would be to make clear that the exercise of the Applicant's compulsory acquisition powers in respect of third party interests are not subject to the subsequent consent of the appropriate Crown authority. The Secretary of State also asked for prior consent to compulsory acquisition from all appropriate Crown authorities.
- 4.14 In response, the Defence Infrastructure Organisation (by letter dated 15 July 2016) and Highways England (by letter dated 14 July 2016) provided prior consent to compulsory acquisition for the purposes of section 135(1). Both the Crown Estate and the Applicant by letters dated 19 July 2016 made representations as to why section 135 should be interpreted to allow for the consent of an appropriate Crown authority to be provided subsequent to the Order being made and that article 39(1)(b) was consistent with section 135. The Crown Estate nevertheless provided prior consent to compulsory acquisition by letter dated 12 August 2016. The Secretary of State notes that that consent requests that article 39 of the Order be amended as set out in the Secretary of State's letter of 12 July 2016 and that the Crown Estate Commissioners be "consulted further if any variation to version 8 of the draft development consent order submitted into the Examination ... is proposed which could affect any other provisions of the Draft DCO which are subject to section 135(1) or 135(2) of the Act". The Secretary of State considers that no such variations have been made and no further consultation with the Crown Estate Commissioners is necessary. The Secretary of State has therefore amended article 39 (article 38 of the made Order) as set out above.

Compensation compounds and means of access

- 4.15 The Secretary of State notes that the Applicant seeks powers to take temporary possession of land to be used as construction working sites (referred to in the Order as "compensation compounds") and powers to make temporary use of access routes to the "compensation compounds". The "compensation compounds" are to be used, not for the construction of the Development, but for the construction of the Hornsea One Project by way of "compensation" for construction working sites which might be unavailable to the undertaker of the Hornsea One Project in the event that the Hornsea One Project and the Development are constructed simultaneously or the Development is constructed before the Hornsea One Project; and their inclusion is sought on the basis that they constitute associated development, development consent for which may be granted under section 115 of the 2008 Act.
- 4.16 The Secretary of State agrees with the Panel that the "compensation compounds" and accesses are associated development for the reasons given by the Panel [ER 9.5.37] and has included provision for them in the Order.

Statutory undertakers

- 4.17 The Report [E.R. 9.5.66] records that, apart from the case of Northern Powergrid (Yorkshire) plc ("NPG"), at the close of the examination there were no outstanding representations under section 127(1)(b) of the 2008 Act in

respect of statutory undertakers' land. (Where such a representation is made and has not been withdrawn, the Secretary of State's powers to grant compulsory acquisition in respect of statutory undertakers' land may be exercised only if the Secretary of State is satisfied of specified matters.)

- 4.18 In a response to the Secretary of State's consultation of 7 April 2016, Watson Burton LLP on behalf of NPG confirmed by letter dated 20 April 2016 that NPG had concluded "contractual documentation with Optimus Wind Limited and Breesea Limited in relation to the protection of NPG's plant and apparatus" and wished to withdraw the representations made.
- 4.19 The Secretary of State also notes that negotiations between the Applicant and E.ON E&P UK Limited and Bayerngas Europe Limited ("E.ON") to protect the interests of E.ON had not concluded by the end of the Examination. The Secretary of State has received a letter dated 21 December 2015 submitted by E.ON to the Planning Inspectorate withdrawing their objections as a private commercial agreement with the Applicant had been agreed. The letter also confirmed that E.ON no longer requires protective provisions to be included in the Order. The Secretary of State has therefore removed Part 13 of Schedule 12 to the recommended Order, which contained the agreed protective provisions.
- 4.20 The Order provides in relation to statutory undertakers for the extinguishment of "relevant rights" and for the removal of "relevant apparatus" (within the meaning of section 138 of the 2008 Act), subject to the protective provisions in Schedule 12. The Panel was satisfied that the extinguishment of relevant rights or the removal of relevant apparatus is necessary for the purpose of carrying out of the Development [ER 9.5.62]. The Secretary of State agrees and accepts that the statutory test in section 138(4) for the inclusion of such provision in the Order is met.

Ecology and Biodiversity

a) Habitats Regulations Assessment

- 4.21 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") and regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 ("the Offshore Habitats Regulations") require the Secretary of State to consider whether the Development is likely to have a significant effect, either alone or in combination with other plans and projects, on a European site or a European offshore marine site, as defined in the Habitats Regulations and the Offshore Habitats Regulations (together a "European site"). If likely significant effects ("LSE") cannot be ruled out, then an Appropriate Assessment ("AA") must be undertaken by the Secretary of State to address the implications for the site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if the Secretary of State has ascertained that the Development will not, either on its own or in combination with other plans and projects, adversely affect the integrity of a European site, unless there is no alternative solution and imperative reasons of overriding public interest apply.

- 4.22 European sites protected include Special Areas of Conservation (“SACs”) established under Council Directive 92/43/EC on the conservation of habitats and species and of wild flora and fauna (the “Habitats Directive”) and Special Protection Areas (“SPAs”) established under Council Directive 2009/147/EC on the conservation of wild birds (the “Wild Birds Directive”). It is also Government policy that proposed Special Protection Areas (“pSPAs”) under the Wild Birds Directive, possible Special Areas of Conservation (“pSACs”) under the Habitats Directive and listed or proposed sites under the Ramsar Convention should be given the same protection as European sites, and the Secretary of State has treated them as such.
- 4.23 The Panel’s overall findings and conclusions in relation to the Habitats and Offshore Habitats Regulations are found in section 6 of the Report.
- 4.24 The Secretary of State notes that the Applicant identified a total of eleven European sites as having potential for LSE, which are listed below. These included the Southern North Sea pSAC which had not been formally consulted on during the Examination:
- Flamborough and Filey Coast pSPA (FFC pSPA)¹
 - Flamborough Head and Bempton Cliffs SPA (FHBC SPA)
 - Forth Islands SPA
 - Fowlsheugh SPA
 - Humber Estuary SPA
 - Humber Estuary Ramsar
 - Humber Estuary SAC
 - Berwickshire and North Northumberland Coast SAC
 - River Derwent SAC
 - The Wash and North Norfolk Coast SAC
 - Southern North Sea pSAC.
- 4.25 Additionally, Natural England (“NE”) and Royal Society for the Protection of Birds (“RSPB”) identified potential for LSE at the Greater Wash possible SPA. The Greater Wash SPA consultation was not published within the Secretary of State’s decision period. Final details of the site’s features and conservation objectives are not yet available on which to make a complete HRA assessment. Despite this the Secretary of State has considered the information provided by the Applicant, the representations provided by NE and the RSPB and the conclusions presented by the ExA. On review of the information currently available, the Secretary of State is content that the Project would not hinder the SPA from being designated in the future.
- 4.26 The Secretary of State notes that since the close of the Examination, Government launched the consultation into possible Special Areas of

¹ The pSPA extends the Flamborough Head and Bempton Cliffs SPA boundary and list of qualifying bird features

Conservation for Harbour Porpoise which included the Southern North Sea pSAC.

4.27 The Secretary of State has considered the potential for LSE on the eleven European sites listed in paragraph 4.24 from both the Development alone and in-combination with other plans and projects. The Secretary of State considers that the Development has the potential for LSE at all eleven sites. This is due to the potential effects of:

- Bird collision risk and displacement during the operational phase;
- Bird disturbance during construction and during decommissioning;
- Marine mammal disturbance from underwater piling noise during construction;
- Disturbance to coastal habitats and changes to water quality at estuarine habitats during construction;
- Impacts upon fish from electromagnetic fields during operation and changes to water quality during construction.

4.28 As the Secretary of State has identified LSE on the eleven European sites listed in paragraph 4.24 he has conducted an Appropriate Assessment to assess the implications for the sites in view of their conservation objectives.

4.29 The Secretary of State notes that the Panel concluded that there would not be adverse effects on the integrity of the European sites set out in paragraph 4.24 as a result of the Development alone or in combination with other plans or projects, provided that suitable mitigation was put in place. The Secretary of State notes that the Panel considered the Southern North Sea pSAC prior to consultation on it being launched and before specific site information was available. Mitigation measures have been incorporated into the Order and the Deemed Marine Licences (“dMLs”).

4.30 NE and Scottish Natural Heritage (“SNH”) agreed with the views of the Panel. The views of NE and the Panel were reliant on certain requirements and conditions and the Applicant’s decision to change the minimum size of the wind turbine generators to 6MW, raise the blade tip height to 34.97m above lowest astronomical tide (“LAT”), reduce the rotor diameter to 241.03m, and reduce the maximum number of turbines to 300. RSPB were unable to conclude no adverse effects on integrity on certain ornithological features (kittiwake, gannet, auk species and fulmar) due to the effects of collision and/ or displacement during the operational phase of the Development. RSPB were also unable to conclude no adverse effects on integrity on certain overwintering and passage intertidal ornithological features (the qualifying features of the Humber Estuary SPA and Ramsar) due to the effects of disturbance/displacement during the construction phase.

4.31 Following the close of Examination and launch of the consultation into pSACs for harbour porpoise the Secretary of State sought further information in a number of consultations from the Applicant, NE, JNCC and other Interested Parties into the potential impacts of the Development on the Southern North Sea pSAC.

- 4.32 The Secretary of State consulted on amendments to Condition 8 of each dML which were required in order to reach a conclusion of no adverse effect on integrity on the Southern North Sea pSAC in the event that driven or part-driven pile foundations are used during construction. The effect of the amendments is to ensure that the plan and code of construction practice which must be approved under Condition 8 contain mitigation to ensure no adverse effect on integrity.
- 4.33 The Secretary of State has carefully considered the representations received following consultation. NE, JNCC, The Wildlife Trusts (“TWT”) and Whale and Dolphin Conservation (“WDC”) agreed with the need for the amendments. The Secretary of State notes the representation made by the Applicant which states that the plan referred to in paragraph (1) of Condition 8, which the Applicant states will predominantly be informed by navigational and health and safety considerations, should be excluded from the new requirement. The Secretary of State considers that it is important that mitigation should be a consideration when this plan is approved along with other considerations. Because the Secretary of State considers that mitigation should be considered when this and other plans are approved, such as the construction method statement, and that mitigation measures should be included in the various plans (where relevant), he does not think it necessary for there to be a separate Southern North Sea pSAC mitigation strategy, as advised by NE and the JNCC.
- 4.34 In light of representations made by TWT and Whale and Dolphin Conservation (“WDC”) on consultation, the Secretary of State has decided to incorporate additional wording in condition 8 of the dMLs to ensure that the MMO consults such persons as the Secretary of State may specify before approving specified plans. This may include the SNCBs, TWT and WDC or other bodies responsible for regulating marine activities.
- 4.35 The Secretary of State notes the response of the MMO but maintains the view that the dML is the most appropriate place for the new condition as all plans referred to in Condition 8 (including the Marine Mammal Mitigation Protocol (“MMMP”)) will be approved by the MMO, as will other MMMPs for other offshore wind developments. In addition as the body responsible for the enforcement of the marine licences for this and many other offshore developments, the MMO will have greater oversight of works occurring within the offshore area in order to identify suitable timing for construction should this be required.
- 4.36 The Secretary of State has concluded that the provisions will ensure no adverse effect on the integrity of the Southern North Sea pSAC. The Secretary of State considers that Condition 8(7)(a), (b) and (c)² allow a conclusion of no adverse effect on site integrity to be reached as these ensure that piling can only go ahead in seasons of least impact, piling will only occur after consideration and restriction of timing of construction of the Development in relation to other projects and have the capacity to limit the locations of turbines such that fewer turbines are located within the pSAC and/or that turbines are placed at the greatest possible distance from the pSAC boundary. Sub-paragraphs (d) to (f) of Condition 8(7) provide additional mitigation measures

² Condition 8(7)(a) and (b) of the dMLs for the transmission assets.

should these be available at the time of construction and could be used such that the implementation of sub-paragraphs (a) to (c) may be limited.

- 4.37 The Secretary of State notes the advice from NE and JNCC that it will be vital that the Applicant accepts stringent requirements to review the need for mitigation and agree with the MMO and consultees a programme of required measures as early as possible, to ensure that they can secure appropriate equipment and installation contracts and ultimately comply with the condition. The Secretary of State considers that early engagement with the MMO and consultees is a crucial element of the provision and advises the Applicant to start these discussions as soon as possible.
- 4.38 On the basis of the Appropriate Assessment's consideration of the issues raised the Secretary of State considers that with the Applicant's proposed reduction in project parameters (minimum size of the wind turbine generators to 6MW, raise the blade tip height to 34.97m above LAT, reduce the rotor diameter to 241.03m, and reduce the maximum number of turbines to 300), alongside the requirements and conditions included in the dMLs and DCO, he is able to exclude adverse effects on the integrity of the eleven European sites listed in paragraph 4.24 above and finds no reason in respect of this issue not to make the order.
- 4.39 A copy of the Secretary of State's HRA which contains the Appropriate Assessment is published alongside this letter on the Planning Inspectorate's website.

b) Effects on other protected Sites and Species

- 4.40 The Secretary of State notes that should piling be required to install foundations, an application for a European Protected Species ("EPS") licence would be required to ensure no offence is committed pursuant to regulation 39 of the Offshore Habitats Regulations. During the Examination the Applicant provided a draft EPS Licence Method Statement and Supporting Information (Offshore) document. The MMO provided a letter of comfort confirming that, based on the information in the draft ES at the section 42 consultation stage, an EPS licence would be required (should piling be undertaken) and that it is reasonable to expect such a licence would be granted by the MMO. The Panel concluded that on the basis of evidence presented, it would be reasonable to assume that licences would be issued (for harbour porpoise, minke whale and white beaked dolphin) [8.2.11]. The Secretary of State agrees with this conclusion.
- 4.41 The Applicant identified three Sites of Special Scientific Interest ("SSSI"), one National Nature Reserve ("NNR") and one Local Nature Reserve ("LNR") within 5km of the cable route corridor:
- Humber Estuary SSSI
 - North Killingholme Haven Pits SSSI
 - Tetney Blow Wells SSSI
 - Donna Nook NNR
 - Bradley Wood LNR

4.42 In addition the Applicant identified several coastal SSSIs with regard to ornithological features which could be affected by the Development. Impacts for all sites were assessed by the Applicant as, at most, minor to negligible adverse.

4.43 The Panel concluded that, with the implementation of agreed mitigation, there would be no conflict with development plan policies aimed at the protection and enhancement of habitats and their biodiversity [ER 7.7.1]. The Panel also concluded that there would be compliance with the biodiversity requirements of NPS EN-1. The Secretary of State agrees with these conclusions.

Other Matters

Water Framework Directive

4.43 Issues relating to the Water Framework Directive (“WFD”) were considered during the Examination. In particular, the Secretary of State notes that the Environment Agency (“EA”) confirmed in its Statement of Common Ground (SoCG) with the Applicant that the Development should not lead to any significant effects on water quality, surface and groundwater, and designated water bodies [ER 5.21.6]. The Panel concluded that the water quality and resource issues and compliance with the WFD have been addressed adequately and meet the requirements of EN-1 [ER 5.21.9]. The Secretary of State agrees with the EA and the Panel’s conclusions in these matters.

Commercial Fishing

4.45 The Secretary of State notes that Holderness Fishing Industry Group (a representative body of UK fishermen and fish merchants in the Holderness region), the National Federation of Fishermen’s Organisations (a representative body for a number of UK fishermen) and VisNed (the Dutch Demersal Fisheries Organisation) maintained concerns at the end of Examination relating to:

- The impact of the Development alone and cumulatively on the safe shipping conditions to enable fishing operations to co-exist;
- The requirement for a post-installation trawl survey to verify a lack of snagging hazards;
- The need for a transparent process to make up for any attributable loss of earnings and/or costs associated with relocating gear needed; and
- The need for a community benefit fund in relation to potential impacts on the fishing industry; and
- A need for a requirement to secure provisions for a fishing and co-existence plan within Marine Licences/the Order.

4.46 The Secretary of State notes that similar issues were raised by Danish and Belgian fishing organisations during the examination, and that the Applicant had agreed Statements of Common Ground with these organisations which confirmed that there were no areas of disagreement between the Applicant, Belgian or Danish fishermen at the close of the Examination [ER 5.5.7]. The Panel noted that the MMO is satisfied with the assessment of the impacts by the Applicant and proposed control measures that would be put in place during construction, operation and decommissioning, and therefore concluded that the

Applicant has responded adequately to the areas of disagreement with the Holderness Fishing Industry Group, the National Federation of Fishermen's Organisations and VisNed. The Secretary of State therefore agrees with the conclusion of the Panel that the recommended Order provides sufficient control in relation to commercial fisheries [ER 5.5.12].

Disapplication of legislative provisions

4.47 Article 3 of the recommended Order contained, with the consent of the Environment Agency, a provision disapplying section 109 of the Water Resources Act 1991. The effect of section 109 was to prohibit *inter alia* the erection of structures in watercourses forming part of a main river without consent. Section 109 has now been repealed, and activities that previously required consent under section 109 now require a permit under the Environmental Permitting Regulations 2010. The Secretary of State has reflected the repeal in the made Order.

5. Transboundary Impacts

5.1 Two screening exercises for transboundary impacts was undertaken by the Secretary of State for Communities and Local Government ("SoSCLG") for the purposes of regulation 24 of the 2009 Regulations, the first following the Applicant's request for a scoping opinion, and the second following the submission of the Application.

5.2 Following the first screening, SoSCLG concluded that significant effects were likely on the environment of the Netherlands, Denmark, Germany, Iceland, Norway, France and Belgium with regard to potential impacts on Natura 2000 sites, fishing activities and navigation. A notice was placed in the London Gazette on 25 January 2013 and the foregoing EEA states were notified. The Netherlands indicated that it wished to participate in the examination.

5.3 Following the second screening, SoSCLG concluded that there could be significant effects on the environment of the foregoing EEA states in relation to effects on commercial fishing, marine mammals and birds (which could be qualifying features of Natura 2000 sites), shipping and navigation and the economies of other EEA states though the purchasing of equipment and the sourcing of labour. In doing so, SoSCLG applied the precautionary approach set out in the Planning Inspectorate's "Advice Note 12: Transboundary Impacts Consultation". The states that did not respond previously were re-notified, and a consultation letter was sent to the Netherlands. Only the Danish authorities responded, and the Danish Nature Agency subsequently confirmed that it had no comments to make. None of the other states responded.

5.4 The Panel stated that it had regard to the responses received and to the ongoing duty to have regard to transboundary matters during the Examination and that there are no matters outstanding that would argue against the Order being made [ER 3.12.6].

- 5.5 The Panel concludes that transboundary impacts have been assessed, have been made known to relevant EEA states and would be appropriately mitigated were the recommended Order to be made [ER 11.1.3 (3)]. After careful consideration, the Secretary of State is satisfied that the Development, either alone or in-combination with other plans or projects, will not adversely effect the integrity of any of the transboundary European sites. A description and evaluation of these impacts are detailed within the Secretary of State's HRA.

6. Representations Received After the Close of the Examination

- 6.1 The Secretary of State has considered the letter dated 21 December 2015 from E.ON to the Planning Inspectorate and has made changes to the Order accordingly as discussed in paragraph 4.19 above.
- 6.2 The Secretary of State consulted Interested Parties on a number of issues on the 29 March 2016, 7 April 2016, 28 April 2016, 26 May 2016 and 12 July 2016.

1. The Secretary of State's Consultation of 29 March 2016

- The Secretary of State requested joint advice from NE and JNCC on the latest conservation advice for the Southern North Sea pSAC to allow the Secretary of State to undertake a Habitats Regulations Assessment of the potential effects of the Development, both alone and in-combination with other plans and projects, on the harbour porpoise feature of the Southern North Sea pSAC.
- The Secretary of State received a joint response from NE and the JNCC on the status of the management activities within the Southern North Sea pSAC and their advice on how the HRA for the Project should be undertaken. After considering this response, the Secretary of State issued a second consultation inviting the Applicant to provide any additional information for the purposes of a HRA on the likely effects of the Project on the harbour porpoise feature of the pSPA.

2. The Secretary of State's Consultation of 7 April 2016

- The Secretary of State requested the Applicant to provide any additional information for the purposes of a HRA of the likely effects of the Development, both alone and in-combination with other plans and projects, on the Harbour Porpoise feature of the Southern North Sea pSAC. The Secretary of State received a response from the Applicant which provided an interpretation of the information they had submitted during the Examination in the context of the draft material and interim SNCB advice to assist the Secretary of State in undertaking an HRA. The Secretary of State also received a response from the TWT to reiterate the points they had made during the Examination.
- The Secretary of State also sought additional information from any Interested Party including NE, JNCC and the RSPB to allow for a HRA of the likely effects of the Development, both alone and in-

combination with other plans and projects on the features of the Hamford Water pSPA. Responses were received from NE, the Applicant, and the RSPB, and the Secretary of State's consideration of these responses are discussed in detail in the Secretary of State's HRA.

- The Secretary of State requested views from the Applicant, NLC and HE on whether the ExA's proposed amendment to Requirement 5 (archaeology landward of mean low water springs) in Part 3 of Schedule 1 to the proposed Order addressed the concerns raised by NLC and HE and had not been agreed by the close of Examination. As noted in paragraph 4.6 above, NLC and HE responded to confirm that, subject to minor amendments flagged in their response, the amendment to Requirement 5 would fully address their outstanding concerns.
- The Secretary of State requested the Applicant to provide evidence that the "appropriate Crown authority" has consented to compulsory acquisition under proposed article 19 for the purposes of section 135(1)(b) of the Planning Act 2008. The Secretary of State received a response from the Applicant setting out the position reached during the Examination. After considering these responses, the Secretary of State initiated a further consultation on 12 July 2016 as noted below.
- The Secretary of State requested an update from the Applicant and NPG as to whether an agreement on bespoke protective provisions which was outstanding at the end of Examination had been reached and, if so, to provide the agreed provisions. As discussed in paragraph 4.18 above, the Secretary of State received a response from NPG confirming that NPG had concluded their negotiation with the Applicant and wished to withdraw their representation.

3. The Secretary of State's Consultation of 28 April 2016:

- The Secretary of State invited comments from NE, the JNCC and any other Interested Party on the Applicant's response to the Secretary of State's consultation of 7 April. The Secretary of State received responses from the WDC, TWT, RSPB and a joint response from NE and JNCC. The Secretary of State's consideration of these responses is covered in detail in his HRA.

4. Representation received on 24 May 2016:

- Following the responses to the Secretary of State's consultation of 21 April 2016 from NE, JNCC, TWT, RSPB and WDC on Harbour Porpoise, the Applicant submitted further information on 25 May 2016. The Secretary of State's consideration of the information submitted by the Applicant is covered in detail in the HRA. In light of the responses from NE, the JNCC and other Interested Parties to the Secretary of State's consultation of 28 April, and the representation made by the Applicant on the 24 May 2016, the Secretary of State

issued a further consultation to invite views from NE and the JNCC and any other Interested Parties on the Applicant's submission of 24 May 2016 on the harbour porpoise feature of the Southern North Sea pSAC.

5. The Secretary of State's Consultation of 26 May 2016:

- The Secretary of State issued a further consultation to invite views from NE and the JNCC and any other Interested Parties on the Applicant's submission of 24 May 2016 on the harbour porpoise feature of the Southern North Sea pSAC. The details of the Secretary of State's consideration of the responses from the Applicant, the MMO, WDC, TWT and the joint response from NE and JNCC can be found in his HRA.
- The Secretary of State also sought further information from NE, RSPB and the Applicant on potential fulmar displacement at the Forth Islands SPA, the Fowlsheugh SPA and the Flamborough and Filey Coast pSPA. The Secretary of State's consideration of the responses from NE, the RSPB and the Applicant is considered in detail within the HRA.
- Having considered the responses, the Secretary of State initiated a following consultation to seek views on the Applicant's submission of 27 June 2016, in particular on the adequacy of the revised fulmar displacement mortality figures for the Flamborough and Filey Coast pSPA and the additional proposed provisions suggested by NE and JNCC on Condition 8 (pre-construction plans and documentation) of the proposed dML to ensure no adverse effect on integrity of the Southern North Sea pSAC.

6. The Secretary of State's Consultation of 12 July 2016

- The Secretary of State requested a response from the Applicant, the Crown Estate, the Defence Infrastructure Organisation and Highways England on a number of issues in respect of the compulsory acquisition rights for Crown Land sought by the Applicant. As set out in paragraph 4.14 above, the Secretary of State received a response from the Defence Infrastructure Organisation, Highways England and The Crown Estate providing prior consent to compulsory acquisition. The Secretary of State has therefore amended the Order as set out in paragraph 4.13.
- As discussed in paragraphs 4.32 – 4.35 above, the Secretary of State also sought views from the Applicant, NE, the JNCC, the Marine Management Organisation and any other interested party on the additional provisions to Condition 8 (pre-construction plans and documentation) of the proposed dML to ensure no adverse effect on integrity of the Southern North Sea pSAC should mitigation be required suggested by the JNCC and NE in their response to the Secretary of State's consultation of 26 May 2016. The Secretary of State's consideration of the responses received from the Applicant,

the MMO, WDC, TWT and the joint response from NE and JNCC is covered in detail in the Secretary of State's HRA. As noted in paragraphs 4.31 - 4.35, the Secretary of State has decided to incorporate additional wording in Condition 8 of the dMLs to ensure no adverse effect on the integrity of the Southern North Sea pSAC.

- The Secretary of State also sought observations on the Applicant's submission of 27 June 2016 in relation to fulmar displacement mortality, the FFC pSPA and Forth Islands SPA and the Fowlsheugh SPA from NE, SNH and any Interested Party. The Secretary of State's consideration of the responses received from NE, the Applicant, the RSPB is contained in detail in the HRA. The Secretary of State is satisfied that the project would not have an adverse effect upon the integrity of the FFC pSPA, Forth Islands SPA and the Fowlsheugh SPA.

6.2 In addition to the responses recorded above, the Secretary of State also received a number of responses from a number of organisations stating that they had no comments.

6.3 The Secretary of State's consultation letters and responses to the consultations can be accessed on the Planning Inspectorate website at:

- <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/hornsea-offshore-wind-farm-zone-4-project-two/?ipcsection=docs&stage=6&filter1=DECC+Consultation>

7. General Considerations

Equality Act 2010

7.1 The Equality Act 2010 includes 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 partnerships³; 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 the Application.

Human Rights Act 1998

³ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

7.2 The Secretary of State has considered the possible interference with human rights protected by the Human Rights Act 1998 by the Development and compulsory purchase powers. The Secretary of State notes that the Panel concluded that the proposed interference with human rights would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent. The Secretary of State agrees that the Panel's rationale for reaching its conclusion, as set out in ER 9.7.5, provides a justifiable basis for taking the view that the grant of development consent would not be unlawful under section 6(1) of the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

7.3 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 Report considers biodiversity sufficiently to accord with this duty.

Marine Licences

7.4 The Order deems marine licences to have been issued under Part 4 of the Marine and Coastal Access Act 2009. In accordance with regulation 3A of the Infrastructure Planning (Decision) Regulations 2010, the Secretary of State has had regard to the need to protect the environment, the need to protect human health and the need to prevent interference with legitimate uses of the sea.

8. Secretary of State's conclusions and decision

8.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting development consent, given the national need for the proposed Development and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme, as mitigated by the terms of the Order.

8.2 The Secretary of State has therefore decided to accept the Panel's recommendation in paragraph 11.2.1 of the Report to make the Order granting development consent and to impose the requirements recommended by the Panel, but subject to the modifications described below.

9. Modifications to the Order

9.1 In considering the draft Order submitted with the Panel's report, the Secretary of State has decided to make modifications to the recommended Order. The principal modifications, and the reasons for them, are set out below:

Article 3 (disapplication of legislative provisions)

- The Secretary of State has combined article 3 with article 37 (disapplication of constraints on works in the Humber) of the recommended Order so that all legislation disapplied by the Order appears in one provision.
The Secretary of State has replaced a reference in article 3(a) to section 109 of the Water Resources Act 1991 (now repealed) with a reference to the Environmental Permitting (England and Wales) Regulations 2010 (**see paragraph 4.44 above**).

Article 21 (private rights)

- The Secretary of State has amended article 21(3) to make it clear that, when temporary possession of land is taken under the powers conferred by the Order, private rights are suspended only in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken.

Article 35 (transfer of benefit of Order)

- The Secretary of State has included article 35(1) to make it clear that the benefit of the Order may be transferred only in accordance with the Order.
- The Secretary of State has included article 35(7)(b)(ii) to ensure that the notice of a transfer of the benefit of the Order which must be given under paragraph (6) is accompanied by a copy of the Secretary of State's consent to the transfer, where such consent is required.
- Article 35 has been redrafted to make the intention clearer.

Article 38 (Crown rights)

- Article 38 the Secretary of State has amended article 38 to provide that the powers in the Order to compulsorily acquire third party interests in Crown land are not subject to the subsequent consent of the appropriate Crown authority (**see paragraph 4.10 – 4.14 above**).

Schedule 1, Part 3 (requirements)

- Requirement 1 (time limits) - the Secretary of State has removed the power to extend the period within which the Development must be commenced. He considers that any request to change the period should be subject of an application to amend the Order under the relevant provisions of the 2008 Act.
- Requirement 5 (archaeology landward of mean low water springs) – the Secretary of State has amended the requirement to reflect the wording agreed with North Lincolnshire Council, Historic England and the Applicant as set out in the Applicant's letter of 21 April 2016 in response to the Secretary of State's letter of 7 April 2016 (**see paragraph 4.6 above**).

Marine Licences

- Condition 8 (pre-construction plans and documentation) – the Secretary of State has amended Condition 8(2)(e) to make it clear that the intention of the marine mammal mitigation protocol is to prevent injury and/or significant disturbance to marine mammals. “Disturbance” is defined by reference to regulation 39 of the Offshore Habitats Regulations.
- The Secretary of State has also amended Condition 8 to provide that, in the event that driven or part-driven pile foundations are proposed to be used, the MMO’s approval for the plans referred to Condition 8 may not be given unless the MMO is satisfied, following consultation with such persons as the Secretary of State may specify, that the plans provide the mitigation necessary to avoid adversely affecting the integrity of a European site (including the Southern North Sea pSAC), to the extent that marine mammals are a protected feature of that site (**see paragraph 4.33 – 4.35 above**). Examples of mitigation are set out in Condition 8(7).
- Condition 10 – the Secretary of State has amended Condition 10(3) to make it clear that, before agreeing to an amendment to a previously-approved plan, the MMO’s obligation to consult the person with whom consultation was originally required applies not only to the plans approved under paragraph (2) of Condition 8 but also to the plan approved under paragraph (1) of that Condition.
- Condition 18 (restrictions in intertidal area and Humber Estuary Special Area of Conservation) – the Secretary of State has added paragraph (6) to make it clear that where MMO approval is required for anything other than that provided for in Condition 18, the MMO can only give approval where it has been demonstrated to their satisfaction that the alternative is unlikely to give rise to any materially new or materially different effects from those assessed in the environmental statement.

Schedule 12 (protective provisions)

- The Secretary of State has removed Part 13 of the recommended Order, which contained protective provisions for E.ON E&P UK Limited (“E.ON”) and Bayerngas Europe Limited (**see paragraph 4.19 above**).

Other Drafting Changes

9.2 In addition to the above, the Secretary of State has made various changes to the recommended Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language); the removal of unnecessary material; changes in the interests of clarity and consistency; and changes to ensure that the Order and the marine licences have the intended effect.

10. Challenge to decision

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

11 Publicity for decision

11.1 The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours sincerely

Giles Scott

Head, Energy Infrastructure Planning and Coal Liabilities

Annex D

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 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 beginning with the day after the date when the Order is published (or, if later, the day after the day on which the Secretary of State's Statement of Reasons (the decision letter) is published). The Hornsea Two Offshore Wind Farm Order 2016 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/yorkshire-and-the-humber/hornsea-offshore-wind-farm-zone-4-project-two/>

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).