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Dear Sir

**Application by East Anglia Offshore Limited for an Order Granting Development Consent for the East Anglia THREE Offshore Wind Farm**

We write further to your letter of 17 November.

We would comment as follows:

**DCO Article 37 (Crown rights)**

The following "Crown rights" wording should be included as Article 37 of the draft development consent order:

"37(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee -

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) -
  - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

37(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically."

We do not consider the word "take" in Article 37(1)(a) to be superfluous and this has been incorporated in all Crown rights wording in recent development consent orders.

The Crown Estate Commissioners are of the view that section 135(1) of the Planning Act 2008 (“the Act”) permits the inclusion of provision in a development consent authorising the compulsory acquisition of third party interests in Crown land subject to the consent of the appropriate Crown body to the exercise of such rights.

However and without prejudice to their position in relation to section 135(1), the Commissioners are in the process of agreeing with the Applicant a position which would provide the Commissioners with sufficient assurance as to the way in which compulsory acquisition powers of third party interests in Crown land forming part of the Crown Estate may be exercised. This would permit the Commissioners to provide their consent to the compulsory acquisition of the third party interests in the relevant plots for the purpose of section 135(1) of the Act and their consent to the provisions of the draft development consent order for the purpose of section 135(2) of the Act. On the provision of the Commissioners’ consents:

1. Article 37(1)(b) as referred to above would need to be deleted from the draft development consent order; and
2. A new paragraph would need to be added as Article 37(2) of the draft development consent order as follows:

“Paragraph (1) does not apply to the exercise of any right under this Order compulsorily to acquire an interest in any land that is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.”

**Schedule 8 prospective Part 7 (protective provisions), Annex A Page ii (options for protective or balancing questions) and Annex A Page viii (proposal 3)**

Such matters are ultimately for the Applicant and Eni UK Limited to resolve. However, the Commissioners encourage co-ordinated development of the seabed. We believe that developers have entered into co-operation agreements with oil and gas licensees in the past such that as far as we are aware protective provisions are generally not sought in such circumstances. The Commissioners are of the view that any co-existence of rights in such circumstances should be capable of being resolved between the relevant parties without the need for protective provisions.

**Other comments on the draft development consent order**

In addition to the questions in your letter, we note the inclusion of paragraph (7)(b) to Article 5 (Benefit of Order). The effect of this paragraph is to remove from the transferor or lessee liability for restrictions, liabilities and obligations associated with the transferred benefit at the date of transfer. The paragraph expressly provides that the original undertaker will remain liable for any restrictions, liabilities and obligations that occurred prior to the date of transfer but the draft development consent order is silent on the transferor’s or lessee’s position where it makes only a partial or temporary transfer of the benefit.

In the case of a partial transfer, there may be restrictions, liabilities and obligations which in practice cannot be “ring-fenced” around the transferred benefit and in those circumstances the transferor should remain liable for overlapping restrictions, liabilities and obligations as well as those solely associated with the retained benefit.

In the case of a temporary transfer, we believe the draft development consent order should make express provision for the resumption of liability for related restrictions, liabilities and obligations by the transferor or the lessee.

Accordingly, in our view, paragraph (7)(b) to Article 5 should be removed from the draft development consent order or express provision made for the transferor’s or lessee’s liability where a partial or temporary transfer of benefit is made.

In paragraph 33(2)(b) of Part 3 of Schedule 1 should “MoD” be replaced with “Ministry of Defence” as MoD is not defined ?

Some of the point numbers for the listings of the grid coordinates appear to have gone awry with the sequence of points re-starting: Schedule 1 Part 1 paragraph 2, pages 37 and 38; Schedule 12 Part 1 paragraph 5, page 155;

Schedule 13 Part 1, paragraph 5, pages 173 and 174; Schedule 14 Part 1 paragraph 5, page 155; Schedule 13 Part 1, paragraph 5, page 189; and Schedule 15 Part 1, paragraph 5, page 201.

Yours sincerely



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For and on behalf of the Crown Estate Commissioners