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All Interested Parties, Statutory Parties
and Other Persons

Your Ref:

Our Ref: EN010077

Date: 19 November 2020

Dear Sir/ Madam

**Planning Act 2008 – Section 89 and The Infrastructure Planning
(Examination Procedure) Rules 2010 – Rule 9**

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

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

Procedural Decisions on Changes to the Applications and Written Questions

I am writing to advise you of procedural decisions by the Examining Authorities (ExAs) in relation to two matters:

- **Changes to the Applications Submitted at Deadline 1**

Having regard to proposed changes to the Applications submitted to both Examinations at Deadline 1 by East Anglia ONE North Limited and East Anglia TWO Limited (together referred to as 'the Applicants') and to guidance in the Planning Inspectorate's Advice Note 16: Requesting Changes ('AN16')¹, the ExAs have decided that some elements of the proposed changes are not material changes but that others (requesting additional land) are and that these also engage the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) the 'CA Regulations'). The ExAs have accepted the proposed changes for Examination on that basis. The ExAs draw attention to additional measures to ensure adequate consultation and Examination of the proposed changes (Procedural Decision 23).

- **Further Written Questions (ExQ2)**

Having regard to the range of material submitted to both Examinations at Deadline 1, the ExAs have decided that they will not publish their second written questions (ExQ2) on 26 November 2020 (Procedural Decision 24).

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/07/Advice-note-16.pdf>



These procedural decisions are set out in full **in Annex A** to this letter. The procedural decisions tracker issued as Annex B1 to the Rule 8 Letters of 12 October 2020 has been re-published to take account of these decisions and a link to it is provided in Annex A.

In relation to Procedural Decision 23, the ExAs note that the Applicants' 'Notice of Intent to Make Non-Material or Material Changes' flagged their intention to submit further changes to the Applications at Deadline 3 [REP1-039] (paragraphs 48 to 51). It is an important part of the Examinations process that Applicants do take steps to exclude or mitigate the adverse effects of the proposed developments and so the ExAs encourage such work. However, attention is drawn to a principle underlying the ExAs' decision in respect of these changes that may be of relevance in relation to future changes. Where proposed changes extend the Order land onto land that statutory consultees have not previously considered and/or there are new owners or beneficiaries affected who have not previously been notified or listed in the Books of Reference as Affected Persons, then following advice in the AN16 (at paragraph 2.1) there is a raised likelihood of materiality. It is also most likely that the CA Regulations will be engaged by such changes, in turn requiring additional Examination processes.

Where changes are material and/or invoke the CA Regulations, sufficient time for notice, consultation and responses, and the means within the Examinations for full written and oral inquiries to be made by the ExAs need to be planned for and available (see AN16 section 6). If material changes are submitted to the Examinations without sufficient time to address these requirements, they may not be able to be accepted for examination (see DCLG Examinations Guidance² at paragraph 115). The Applicants are requested to engage with the Case Manager at their earliest opportunity to ensure that the implications and timescales of any further changes are fully understood.

Yours faithfully

Rynd Smith

Lead Member of the Panels of Examining Inspectors

This communication does not constitute legal advice.

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² Planning Act 2008: Guidance for the examination of applications for development consent DCLG, March 2015
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance-final_for_publication.pdf



Annex A

Procedural Decisions made by the Examining Authorities

The ExAs have made the following procedural decisions³. They are numbered commencing at 23, recognising procedural decisions 1 to 19 made during the pre-examination period and 20 to 22 made following the Preliminary Meetings and confirmed in the Rule 8 Letters of 12 October 2020. Procedural decisions 1 to 22 can be accessed from the linked Procedural Decisions Tracker⁴ which replaces Annex B(1) of the Rule 8 Letters of 12 October 2020.

23. **Proposed Changes to the Applications: Approach to Consultation and Examination**

At Deadline 1 to both Examinations, the Applicants submitted:

- An 'Application for the Inclusion of Additional Land' [REP1-037]⁵; and
- 'Notice of Intent to Make Non-Material or Material Changes' to the submitted Applications [REP1-039].

In the document entitled 'Notice of Intent to Make Non-Material or Material Changes' the Applicants set out their view that a range of proposed changes to the Applications are non-material.

The proposed changes fall into two groups:

- changes that reduce the land (including sea) and/ or airspace sought to be used by the proposed developments and that are recorded in section 2 of the 'Notice of Intent to Make Non-Material or Material Changes' (the 'section 2' changes); and
- changes that seek additional land to be included in the Order land and that are recorded in section 3 of the 'Notice of Intent to Make Non-Material or Material Changes' (the 'section 3' changes).

The ExAs have considered the section 2 changes. They have concluded that these changes are non-material, for reasons set out below. It follows that no formal acceptance, notice, consultation or related process is required before the ExAs commence examination of these proposed changes, which the ExAs will do with immediate effect, alongside the Applications as submitted. This agreement by the ExAs does not imply any acceptance of the planning merits or evidence for the section 2 changes, the effects of which will be examined with equal rigour to the proposals contained in the original Applications.

The ExAs have considered the section 3 changes. They have:

- agreed with the Applicant that these are changes that engage the CA Regulations; but also
- concluded that elements of these changes are also material changes to which the guidance on notice and consultation set out in AN16 applies.

³ Decisions made under Section 89(1) of the Planning Act 2008

⁴ Procedural Decisions Tracker [EA1N](#) and [EA2](#)

⁵ References in [square brackets] are to documents in both Examinations Libraries, where the relevant documents share the same reference numbers.



As a consequence of these decisions, the ExAs have also reviewed the material submitted to support the proposed section 3 changes (the 'proposed provisions' for the purposes of Regulation 5 of the CA Regulations) and have decided to accept and examine these (for the purposes of Regulation 6 of the CA Regulations). A separate pair of Proposed Provisions Checklists⁶ has been prepared for each change application and acceptance decision and these are published in addition to this procedural decision.

The Applicants must engage with the Case Manager to ensure that notice and publicity for the proposed provisions (under Regulations 7 to 9 of the CA Regulations) are carried out in a timely and compliant manner.

Subject to the Applicants' engagement with the Case Manager, the ExAs propose shortly to amend the timetables for each Examination to provide a deadline by which relevant representations in relation to the proposed provisions can be submitted and examination of proposed provisions (under Regulations 10 to 19 of the CA Regulations) can be carried out. Persons wishing to make relevant representations on the proposed provisions should note that Regulation 10 of the CA Regulations provides that these must relate to the proposed provisions – ie, to the additional land or rights sought and to the effects of the proposed development on or to the taking of the proposed additional land or rights. Submissions that relate to the Applications more broadly or to other subject matters will not be accepted or considered by the ExAs.

The Examining Authorities' reasoning

In reaching decisions on the section 2 changes, the ExAs note that none of the proposed changes extend the land (including sea) or the airspace affected by the applications. All have the effect of reducing the land required for the proposed developments. Whilst some of the proposed land reductions relate to individually large parcels of land, in comparison with the scale of the proposed developments as a whole, they are of only minor extent.

The Applicants have provided reasoning which suggests that the proposed developments can be delivered without any requirement for the land proposed to be excluded from the Order land in the section 2 changes.

All of the section 2 changes appear intended to have the effect of reducing the extent and or adversity of environmental effects (and so appear likely to be within the Rochdale envelopes for the proposed developments). Whilst the ExAs make no judgement (pending further examination) as to whether the proposed changes will reduce adverse effects, they accept on the basis of the evidence provided that there is no likelihood that the exclusion of this land from the Order land will lead to any material exacerbation of adverse effects.

On this basis and having taken the advice in AN16 fully into account, the ExAs accept the Applicants' reasoning that none of the changes described in section 2 are material changes to the applications.

⁶ [EA1N – Proposed Provisions Checklist](#) and [EA2 - Proposed Provisions Checklist](#)



In reaching decisions on the section 3 changes, the ExAs' starting point is to note that all of those changes do extend the land or rights sought by the Applicants. The ExAs agree with the Applicants' submissions that the CA Regulations are automatically engaged by any proposed provision authorising the compulsory acquisition of additional land in circumstances where a person with an interest in the additional land does not consent to the inclusion of the provision. In relation to these proposed changes, no evidence has been provided that all persons with interests in the additional land have consented.

Separately to the question about the engagement of the CA Regulations, the ExAs have then given careful consideration to whether these are material changes (with reference to paragraphs 109 to 115 of DCLG Guidance Planning Act 2008: Examination of Applications for Development Consent⁷ and AN16²) and, if so, whether they are so substantial that the developments now being proposed are not in substance those which were originally applied for.

The ExAs recognise that in considering whether or not to accept the proposed changes for examination and forming a view on the materiality of changes, they need to act reasonably and in accordance with the rules of natural justice. The ExAs must be satisfied that anybody affected by the proposed changes would have a fair opportunity to make their views on them known and to have their views properly taken into account. The Applicants' starting point is to propose that the changes set out in section 3 of the 'Notice of Intent to Make Non-Material or Material Changes' are not material. The ExAs are clear that even non-material elements need to be made available to all relevant parties during the Examination in a clear and accessible way – and inclusion in the Examination Libraries with relevant opportunities for comment ensures that that is the case.

The ExAs note that the proposed additional land is of limited extent when compared with the scale of the land required for the onshore works as applied for. However, some of the individual additional land plots are nevertheless of substantial extent in their own individual terms. Their taking and use by the proposed development is of prospectively substantial effect, in terms for example of additionally taking or affecting the use of a substantial element of a field (Work No.7 and Work No 33 (High House Farm), or bringing the effects of construction substantially closer than previously to residential receptors in a village (Work No.7 and Woodside Barn Cottages/ Work No.33). There is a proposal to acquire permanent rights that, although over a relatively small land area, will have an enduring and significant effect for those with current interests in that land (High House Farm) and on those using the Public Right of Way network. These are indicators of materiality and of the desirability of the provision of notice to and engagement with classes of persons broader than those with interests in the affected land and entitled to notice under the CA Regulations.

Furthermore, because the additional land is not negligible in extent and effects arising on and from it have not yet been considered by all statutory consultees

⁷ [PA2008: Guidance for the examination of applications for development consent](#)



and other relevant interested parties, it is important that wider notice and engagement than is secured under the CA Regulations is provided, to ensure that as yet unknown effects potentially arising from the proposals are able to be identified and examined. These are further indicators of materiality and the desirability of notice and engagement as advised by AN16.

The ExAs agree with the Applicants that the proposed changes do not substantially alter the original applications and that the developments now being proposed remain in substance those which were originally applied for. The ExAs are therefore satisfied that the proposed changes do not amount to a different project or projects being proposed. On that basis, the ExAs may appropriately take steps to Examine the proposed changes and will and will continue to examine both applications on that basis.

24. **Second Written Questions (ExQ2)**

Item 11 of the approved Timetable for each Examination (see Annex A to the Rule 8 Letters) enables the ExAs to publish further written questions (ExQ2) 'if required' on Thursday 26 November 2020. Having considered the range of submissions to the Examinations at Deadline 1 and being conscious of the desirability of all IPs and Other Persons having the opportunity to respond to these fully whilst also preparing for Issue Specific and Compulsory Acquisition Hearings to be held from 1 – 3 December 2020, the ExAs have decided that ExQ2 will not be published at that time.