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Our Reference: DIO 10037291 & DIO 10037292

The Planning Inspectorate  
National Infrastructure Directorate  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

24<sup>th</sup> February 2021

Dear Sir/Madam,

**THE EAST ANGLIA ONE NORTH OFFSHORE WIND FARM AND EAST ANGLIA  
TWO OFFSHORE WIND FARM  
APPLICATIONS TO OBTAIN DEVELOPMENT CONSENT ORDERS UNDER THE  
PLANNING ACT 2008.**

I write to provide the response of the Ministry of Defence (MOD) to the written questions and matters for consideration raised by the Examining Authority in relation to the applications for the above offshore wind farms.

**The Examining Authorities' written questions and requests for information  
(ExQs2)**

The Examining Authority's written question 2.1.3 - states:

***Military Aviation***

*The draft Statement of Common Ground (SoCG) between the Applicants and the Ministry of Defence [REP3-078] appears to state that all matters are agreed.*

- a) *Confirm if this is the case, and if so when a signed SoCG will be submitted.*
- b) *If this is not the case, provide an update on progress and next steps.*

In response I can confirm that all matters are agreed between the MOD and the applicants and that the signed SoCG will be submitted for Deadline 8.

The Examining Authority's written question 2.1.4 – states:

***Aviation Lighting***

*Requirement 31 of the dDCO contains two parts, of which part (2) is new and differs from that contained within the draft Statement of Common Ground with the CAA [REP-1-070] and the last correspondence from the Defence Infrastructure Organisation [REP3-105].*

*Part 2 of draft R31 states:*

*(2) Such lights will be operated at the lowest permissible lighting intensity level.*

*Confirm or otherwise that you are content with the revised wording.*

In response I can confirm that the MOD has been advised by the applicant that the wording added to Requirement 31 has been included to address concerns raised by Natural England and other consultees relating to the impacts of aviation lighting fitted to the wind farm on seascape. The applicant has identified that there is provision for lighting required under the Air Navigation Order (ANO) to be operated at 10% of the maximum lighting intensity required when conditions of visibility allow this.

MOD lighting requirements will be separate to those prescribed under the ANO. Should MOD requirements include visible lighting, they will relate to low intensity lighting defining the lowest permissible lighting intensity necessary. As such, there would be no further scope to reduce the intensity of this lighting during its operation.

Therefore, I can confirm that the MOD is content for this wording to remain in the Requirement.

**The Examining Authorities' Commentaries on the draft Development Consent Orders (dDCOs)**

**Arts 38:**

The following issue is raised relating to Article 38 in both dDCOs:

***Bodies discharging requirements***

*Bodies acting under Arts 38 of the dDCOs and discharging or directing under Requirements including:*

- The relevant planning authority;*
- The relevant highway authority;*
- Environment Agency;*
- Historic England;*
- Natural England;*
- Civil Aviation Authority;*
- Ministry of Defence*
- NATS*
- Suffolk County Council (as lead local flood authority);*

*Are requested to confirm that they are content with the application of Arts 38 and Schs 16.*

In response I can confirm that the MOD is content with the wording of Article 38 contained in the dDCOs and its intended application.

**Pt 3 R34:**

The ExA has raised the following question in relation to Requirement 34 of the dDCOs:

***R34: Ministry of Defence surveillance operations***

*Technical abbreviations 'RRH' for the term 'remote radar head' and 'RMS' for radar mitigation scheme are included in drafting, but the full terms to which they relate are not widely used in the dDCOs and are also set out in full in the relevant provision. The abbreviations appear superfluous. Can they be removed?*

In response, I can confirm that the abbreviations identified can be removed.

**Schedule 16:**

The ExA has raised the following question in relation to Schedule 16 of the dDCOs:

***SCHEDULE 16 — Procedure for discharge of requirements***

***Applications for approvals – time period and deemed consent***

*a) Are the discharging authorities content with the time period provided for applications for the discharge of requirements?*

The MOD considers that the 56 day time period proposed by East Suffolk Council would afford greater scope to enable the determination of what may be extensive and complex submissions. This time period is also consistent with that which was defined for this purpose in the DCO that was granted to Norfolk Vanguard offshore windfarm.

There is an established MOD radar mitigation process in place which is normally used by wind farm developers to establish a contractually based radar mitigation scheme, in conjunction with the MOD, which then serves to discharge a MOD radar mitigation Requirement contained in a DCO. The completion of a radar mitigation scheme between a developer and MOD can be an extensive and complex process subject to engagement with the developer. Once completed, the discharge of a subsequent application to discharge a relevant DCO Requirement that is supported by such a radar mitigation scheme can reasonably be reviewed and discharged by the MOD within the timescales indicated above. However, where such an application is made without an agreed radar mitigation scheme in place, it should be expected that the MOD would need to object. There would not be sufficient time within the timescales indicated above for a radar mitigation scheme to be produced and agreed.

*b) If not, what should the relevant period be – and what is the justification for the change? East Suffolk Council has noted [REP5-047] considerable variability in recently made DCOs: it promotes 56 days. Would the Applicant be content with that period?*

See answer above.

*c) Are the discharging authorities content with deemed consent provision in Paras 1(3) in the event that the discharging authority does not determine an application within the decision period? East Suffolk Council has noted that the deemed consent provision was not included in the made East Anglia ONE or East Anglia THREE DCOs and opposes them here on that basis. The Applicants are asked to identify specific concerns that have led to the proposed introduction of deemed consent.*

No, the MOD is not content with proposed deemed consent provision. If Requirements were discharged because the approving authority had not made a response within the timescale, it could result in the development causing the impact that the Requirement was intended to prevent.

*d) If not, what should the relevant procedure be – and what is the justification for the change?*

The undertaker could make an appeal to the Secretary of State via the process set out in section 3 of Schedule 16 of the dDCOs if an approving authority has not determined an application to discharge a Requirement within the established or otherwise agreed timescale. This would ensure that the impact the Requirement is intended to prevent would be addressed.

*e) What specific additional information should the undertaker provide to the discharging authorities and how (for example as provided for in the made Vanguard DCO) might this be provided for?*

We are unable to answer this question at this point in time without details of what information would be provided by the undertaker to discharge a Requirement.

#### **Further information**

*a) Are discharging authorities content with the procedure, time period and deemed satisfaction process provided for further information requests?*

The MOD is content with the procedure. The MOD requests that a 20 day time period is more appropriate than the 10 days currently defined in the dDCOs. The MOD is content with the deemed satisfaction process subject to the adoption of the 20 day period requested.

*b) If not, what should the relevant procedure and period be – and what is the justification for the change?*

Not applicable.

#### **Appeals**

*a) Are discharging authorities and other appeal parties (the consultees) content with the procedure and time period provided for appeals against refusals?*

The MOD is not content with the procedure as currently worded and time periods defined.

*b) If not, what should the relevant procedure and period be – and what is the justification for the change?*

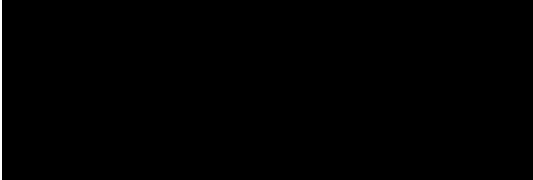
The procedure should be amended to remove the provision included in 3 (7) that would enable an appointed person to determine an appeal without awaiting representation(s) from the discharging authority. In such circumstances the appointed person would not be appropriately informed of all the relevant information which may be a technical and complex nature.

The timescale identified in 3(2)(d) in which a discharging authority is required to submit written representation is currently defined as 15 business days. The MOD is not content

with this timescale. In view of technical and complex nature of the subjects that may be involved, it is requested that this is increased to 40 business days.

I trust this clarifies our position on these questions and points raised by the Examining Authority. Please do not hesitate to contact me should you wish to consider these points further.

Yours sincerely



Jon Wilson

Senior Safeguarding Manager