THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES

2010

East Anglia TWO Offshore Wind Farm

Appendix K11 to the Natural England Deadline 12 Submission

Natural England's Response to the Rule 17 Letter [PD-052]

For:

The construction and operation of East Anglia TWO Offshore Wind Farm, a 900MW wind farm which could consist of up to 75 turbines, generators and associated infrastructure, located 37km from Lowestoft and 32km from Southwold.

Planning Inspectorate Reference: EN010078

28th June 2021

R17Q	To			Question	NE Response
Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))					
R17QF.1	The Applicants, Natural England, Marine Management Organisation and The Wildlife Trusts	1	2	**Southern North Sea (SNS) Special Area of Conservation (SAC): Impact-effect pathways** The Applicant's assessment [APP-043 and APP-046] in relation to the harbour porpoise feature of the SNS SAC excluded Adverse Effect on Integrity for impact-effect pathways relating to disturbance from vessels, collision risk, changes to prey resource, changes to water quality and barrier effects. For the avoidance of doubt, is it agreed with Natural England, the Marine Management Organisation and The Wildlife Trusts that the only potential impact-effect pathway relates to disturbance from underwater noise?	Natural England advises that the only impact pathway through which we cannot exclude an adverse effect on integrity beyond reasonable doubt on the SNS SAC is disturbance from underwater noise, when considered in combination with other plans or projects. However, we also acknowledge that should the regulators group agree an appropriate mechanism for control of in combination projects then this position may change.
R17QF.2	The Applicants, Natural England	1	2	**Non-Material Changes and In-Combination Assessments [REP11-121]** In [REP11-121], Natural England sets out its generic advice regarding the extent to which in-combination assessments (in this case relating to bird collision risk) can rely on Non-Material Changes made to other Development Consent Orders. To the Applicants: a) Please provide a fully reasoned response to the points set out in [REP11-121].	Natural England's views reflect the ramifications, both legal and practical, of using the 'Rochdale Envelope' approach under the Planning Act 2008 process, where proposed developments are assessed and consented on the basis of worst-case scenario parameters. This approach has created uncertainty when developers have sought to rely on as-built parameters when considering cumulative and in-combination issues. As a result Natural England has consistently advised that in-combination assessments for future

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				b) As well as the legal considerations that are raised, please set out any technical and commercial considerations (such as project financing) that would affect the likelihood of future change requests being made to increase project parameters after a project has been built and commissioned. To Natural England. On page 3 of [REP11-121] you state that '*even if the NMC is granted, we question whether it would be appropriate to rely on as-built parameters for HRA purposes in-combination assessments. This is because the developer could, in theory at least, keep on amending the project via NMC applications up to the limit of the Rochdale Envelope*'. c) Given that an NMC, if granted, amends the original made DCO, do you disagree that the project parameters included in that amended DCO should form the basis of figures used in cumulative and/or in-combination assessments of proposed projects? d) Whilst there is no time limit on the submission of NMCs after the grant of a DCO, do you accept that the environmental information supporting the original DCO will, at some point, become out of date, meaning that any theoretical future NMC request would need to be supported by further environmental assessment? e) If so, do you acknowledge that any such further environmental assessment would need to take into account the cumulative	projects must be based on the worst-case parameters consented for existing projects. Natural England is in favour of and has been working with industry and other stakeholders to agree an industry-level strategic approach to legally securing as-built parameters in a way that creates certainty for industry, regulators and other stakeholders. There are many and diverse considerations when seeking to agree such an approach, including the need for high-level regulator-led policy change from BEIS to implement this at a strategic level, rather than piecemeal in relation to individual projects. **c)** Natural England disagrees with that proposition. When a DCO is changed under para. 2 of Schedule 6 of the Planning Act 2008 the original DCO continues in force (see para. 2 (12)(a)). There is no legal reason why a subsequent change under the same provision could not reverse the earlier change. In the absence of new evidence or circumstances suggesting that the HRA of the original Rochdale envelope is no longer reliable a subsequent change of this sort would be a non-material change and would not be time limited. Thus, the worst-case scenario or maximum parameters included in the original DCO should continue to be used in cumulative or

R17Q	To			Question	NE Response
				and/or in-combination position at that time, which may include projects that have been consented in the intervening period? f) Do you consider that any future request to amend a DCO to increase project parameters could in fact constitute a material change, which carries with it a series of consultation and potentially examination measures, as set out in legislation and Guidance? g) If so, does the evident procedural necessity that any future requests (be they material or non-material) to increase project parameters would be subject to proper scrutiny based on an up to date cumulative and/or in-combination assessment in any way amend the submissions that you have set out on this point to date?	in-combination assessments of proposed projects. The requirement for certainty in reg. 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) means that when looking at the cumulative or in-combination effects of existing plans and projects one must look at the full consented extent (or maximum consented parameters) of an existing project, rather than its as-built extent (reflected in a changed DCO), because the original DCO still exists and there cannot be legal certainty that its maximum consented parameters cannot be reinstated. **d)** Natural England agrees that the environmental information supporting the original DCO is likely to become out of date at some time in the future (either because of natural changes, improved methodologies, or other matters). However, no date can easily be put on this. If an application were made to reverse a non-material change Natural England would review the environmental information supporting the original DCO and, if it considered it outdated, would argue that a fresh HRA is needed and, therefore, that such a change should be treated as material. However, if in this scenario the original environmental information held good at the time of the

R17Q	To			Question	NE Response
					application to reverse the non-material change there would be no scope to argue for fresh environmental information or that the change was not non-material. **e)** Yes. **f)** Natural England identifies various scenarios here: • A future request to increase project parameters *beyond* those of the Rochdale Envelope that was used would have to be treated as a material change (with all that that entails). • As outlined in our response to (c) above, an application for a change to increase project parameters could be non-material if the parameters remain within those of the Rochdale Envelope that was used. This scenario is Natural England's concern. In this scenario, such a change would have to be treated as being material *only if* the original HRA is no longer considered adequate to allow it to be ascertained that the original DCO would not have an adverse effect on the protected site, having regard to its conservation objectives. This could be the case where for example

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					natural change or improved methodologies render the original HRA unreliable. New projects with potential cumulative or in combination effects would have used the maximum consented parameters included in the original DCO and therefore in this scenario their existence would not in itself trigger the need for a fresh HRA. **g)** No. If Natural England looks back on the HRA that supported an original DCO and finds that it holds good it cannot advise otherwise, and (if Natural England's advice is heeded) there would then be no reason to treat a future request to restore project parameters to the maximum consented parameters as a material change. This is why it is the originally consented maximum project parameters that should be taken into account for the purposes of cumulative and in-combination assessments.
R17QF.3	The Applicants	1	2	**Red throated diver displacement: London Array monitoring report [REP11-122]** Please respond to the evidence submitted by Natural England at [REP11-122] (NE response to Year 3 Ornithological Monitoring Report for London Array) in support of its position on RTD displacement distances for EA1N and EA2.	**N/A**
R17QF.4	The Applicants, Natural	1	2	**Offshore Ornithology Without Prejudice Compensation Measures [REP11-070]**	Natural England advises that currently the compensation measures proposed have limited detail to advise in detail regarding

R17Q	To			Question	NE Response
	England, Royal Society for the Protection of Birds			In page 57 of [REP11-070], the Applicants have referenced perceived benefits due to reducing conflict between recovering gull breeding numbers and protecting avocets and other ground nesting birds from gull predation. To the Applicants: a) Please expand on how any particular benefits for avocets and other ground nesting birds at Havergate Island would occur should fencing be erected at Orford Ness. b) Is there a danger that an increased gull population at Orford Ness could actually have the effect of increasing gull predation of ground nesting birds at Havergate Island? c) As a more general matter with regard to all of the compensation measures proposed within [REP11-070], please set out how any wider knock-on effects, either beneficial or negative, on other species that might arise from the implementation of the proposed without prejudice compensation measures (for example, rat eradication, predator proof fencing, by-catch measures and artificial nesting sites) have been or would be assessed. This should cover both SPA-qualifying and other species. d) What would be the decision-making mechanism regarding the overall acceptability (or not) of any such knock-on effects that have been identified, and how would these effects be monitored and, if required, mitigated?	the potential ecological positives/negatives associated with these measures. Our experience with other similar proposals has been that there is the potential for such challenges, and there will be a requirement for monitoring and appropriate feedback loops. Please D12 Appendix A15d where we set out what a full compensation package should include. We also advise that consideration should be given not just to SPA species but also to SAC/SSSI habitats, as there are often overlapping designations. It is important that the compensatory measures do not interfere, and are commensurate with, the management of any designated site or feature of those sites. This is particularly true for the proposed LBBG compensation, given the broad location proposed falls within an SAC and an SSSI. Regarding the specific questions raised: b) We note that the majority of the LBBGs within Alde-Ore Estuary SPA already nest at Havergate Island, where there is a substantial population. With this in mind, in Natural England's view it seems unlikely that additional LBBGs breeding at Orford Ness would exert a significant additional predation effect at Havergate Island to

R17Q	To			Question	NE Response
				e) For example, would it be appropriate to amend article 3 of parts 1-6 of Schedule 18 of the dDCO to include a requirement to include within the relevant Implementation and Monitoring Plan an assessment of any potential wider ecological effects (positive and negative) of the proposed compensation measures? If not, why not? To Natural England and RSPB: f) Do Natural England or RSPB have any observations to make on these points, or practical experience of relevance?	those LBBGs already nesting on the Island.
Onshore Substation Siting and Design					
R17QF.5	SCC	1	2	**Land Plans and Appendix 2 of the Outline Operational Drainage Management Plan (OODMP)** Appendix 2 of the updated OODMP [AS-125] shows the order limits in relation to the SuDs basin alternative outfall on Church Lane. Are you content that the order limits shown in Appendix 2 correspond with those shown on Sheet 7 of the Land Plans?	**N/A**
R17QF.6	SCC, Environment Agency	1	2	**Maintenance of the Friston Watercourse** Paragraph 140 of the OODMP [AS-125] states that additional inspection or maintenance works required on the Friston watercourse due to the projects will be addressed by way of an agreement with the Environment Agency prior to commencement of Work Nos 30 and 41.	**N/A**

R17Q	To			Question	NE Response
				To SCC: • Does this satisfy your concerns in relation to this matter and is there sufficient detail within the OODMP? To the Environment Agency: • Can you please confirm that you are content to enter into such an agreement?	
R17QF.7	The Applicants, SCC, ESC, Historic England, SASES, and any other Interested Parties.	**1**	**2**	**Landscape and Visual Impact** The Outline Landscape and Ecological Management Strategy (OLEMS) version 6 dated 11 June 2021 [AS-127] contains an updated design for the proposed SuDS basins. The revised designs remove previous areas of wet woodland within the basins and appears to reorientate the basin for the proposed southern substations. In addition, text within the OLEMS has been amended to state that SuDS basins "may" be encompassed by bunds (as opposed to "will") To the Applicants: a) How likely is it that bunding will be required for the SuDS basins? b) Para 138 of the OLEMS states that bunding for landscaping purposes is subject to detailed design and the availability of suitable material on site during construction. If suitable material is on site during	**N/A**

R17Q	To			Question	NE Response
				construction, provide examples of what bunds may be constructed and to what purpose. To SCC, ESC, Historic England and other Interested Parties: c) Provide any further submissions you may to wish to make on the landscape and visual impact of the latest iteration of the proposed SuDS basins. d) Does the removal of the previously proposed wet woodland have an adverse effect on the ecological aims of the proposed developments? e) Does the removal of the previously proposed wet woodland have an adverse effect on the role of the OLEMS proposals as landscape or historic environment mitigation?	

R17QF.8	The Applicants	1	2	**Landscape and Visual Impact: Additional SuDS capacity for Friston** Previous iterations of the OLEMS contained an illustrative location for a proposed additional surface water management SuDS basin to reduce flood risk for Friston. The latest version of the OLEMS [AS-127] removes this illustrative location, with paragraph 144 stating that: "*Further consideration will be given to the location of any additional SuDS basins during detailed design. Factors to be considered will include whether to locate the additional SuDS basins to the north of the substations (which would control the surface water flows entering the existing drainage channel to the west of the substations), or to the south of the substations (which would control surface water flows entering the outfall pipe connecting to the Friston watercourse)*…" • Provide further information on a potential location for this basin to the south of the substations in landscape and visual impact terms, including details on any potential knock-on effects on proposed landscaping areas currently shown within the OLMP General Arrangement.	**N/A**
R17QF.9	The Applicants	1	2	**Landscape and Visual Impact: Operational Infiltration** The OODMP [AS-125] states that the latest testing at the proposed SuDS basin locations has ruled out an infiltration only solution for both the onshore substations and National Grid infrastructure SuDS basins, and that the	**N/A**

				Applicant has adopted a hybrid infiltration and attenuation system for the onshore substations and an attenuation only solution for the National Grid infrastructure respectively. The OODMP also notes that the final infiltration rates for the SuDS basins and the Q_{BAR} runoff rate for the design discharge rate to the Friston Watercourse will be confirmed during detailed design, allowing the optimal SuDS basins configuration, size, capacity and location to be confirmed. • Confirm (or otherwise) that the further infiltration testing to be carried out will not change the overall design conclusions of the OODMP (version 5) – that is that the SuDS basins will be hybrid infiltration and attenuation for the onshore substations and attenuation only for the National Grid infrastructure.	
Construction					
R17QF.10	The Applicants, SCC, ESC, Historic England, SASES, and any other interested IPs.	**1**	2	**Landscape and Visual Impact: Construction Drainage Management** The Outline Code of Construction Practice [REP11-015] provides an example construction surface water drainage scheme at the Substations Location (Appendix 2, Figure 3). This is described in the text as a worst-case indicative general arrangement (para 176). • Provide any submissions you may wish to make on any impacts of this proposed construction surface water drainage scheme	**No comment**

				on matters of landscape, visual impact and the setting of heritage assets.	
Draft Development Consent Orders (dDCOs)					
R17QF.11	The Applicants	**1**	**2**	**Substation Design Principles Statement Appendix A: Engagement Strategy [REP11-046]** Paragraph 20 of the engagement strategy states, '[o]*nce complete the Architectural Framework will form the base from which the Detailed Design Document (required to satisfy DCO Requirement 12), for each substation will be developed.*' Requirements 12 of the draft DCOs [AS-110] do not refer to a 'Detailed Design Document'; although it's existence might be inferred from the reference to '*details of the layout, scale and external appearance*' in R12(1). a) It is arguable that changes to the drafting of Requirements 12 are necessary to provide adequate security for the approach set out in the Substation Design Principles Statement. Taking that to be the case, please: • propose drafting to secure reference to a 'Detailed Design Document' in Requirements 12. • provide a definition of 'Detailed Design Document' in Articles 2 Interpretation of the draft DCOs; and • make reference in the definition of 'Detailed Design Document' to 'built form' as well as to 'layout, scale and external appearance.'	**N/A**

				b) If it is the Applicants' position that the changes requested at (a) above are not necessary to be included in the dDCOs, please also explain why that is considered to be the case.	