



## **Offshore Wind Farms**

### **EAST ANGLIA ONE NORTH**

**PINS Ref: EN010077**

**and**

### **EAST ANGLIA TWO**

**PINS Ref: EN020078**

**Submission to the Secretary of State**

**SEAS response to the Secretary of State's letter of  
20 December 2021 requesting further information**

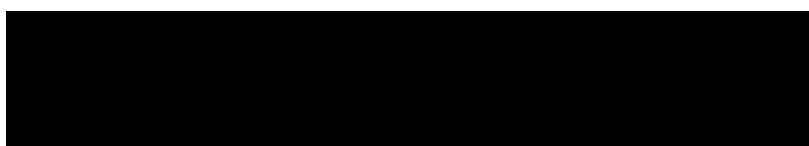
**Deadline: January 31 2022**

**by**

**SEAS (Suffolk Energy Action Solutions)**

**Unique Ref. No. EA1(N): 2002 4494**

**Unique Ref. No. EA2: 2002 4496**



## **Submission to the Secretary of State**

### **SEAS response to the Secretary of State's letter of 20 December 2021 requesting further information**

**Deadline: January 31 2022**

1. In this response we address 2 issues: (i) SPR's strategy of prohibiting landowners from giving evidence; and (ii) biodiversity

#### ***Mounting public concern across East Suffolk***

2. The Minister will no doubt have seen the article in the Financial Times dated 6 January 2022 (Annex A) which highlights the intense anger being felt across an increasingly wide area of East Anglia which will be harmed, if the applications are consented.
3. There are now periodic protests and public objections which have spread to a variety of villages and towns. This deep unease is inflamed by the fact that the Secretary of State is being asked to approve applications by the Spanish owned SPR, such approval procured by what Dr Therese Coffey MP described as "sharp practice".

#### ***Failure again to address the effect of SPR's strategy of paying landowners not to give evidence***

4. Once again the Secretary of State has sought information from only those who were participants during the examination and has ignored all of those many landowners who were pressured into secret agreements which prohibited them from giving evidence to the inspectors.
5. We will not repeat the points that we have now made on previous occasions to the effect that throughout, the procedure has been profoundly unfair and biased in favour of SPR.
6. If the Secretary of State takes a decision in favour of ScottishPower Renewables (SPR) he will be condoning and approving of the making by developers of secret payments to all those who might oppose it during a public inquiry and investigation, which is meant to be conducted in the broad public interest.
7. It is useful to consider the implications if this is lawful:
  - On this basis the Cabinet Secretary or a Special Advisor could make secret payments to civil servants and get them to sign a secret agreement not to give evidence to Sue Gray or to the Police about parties in No 10. Sue Gray and the Police could – knowing full well of

these payments – then exonerate the partygoers upon the basis of a lack of evidence.

- Cladding manufacturers could make secret payments to witnesses who otherwise might give evidence to the Grenfell Towers Inquiry adverse to the manufacturer e.g. about sub-standard production methodology. It would then be acceptable for the Inquiry, knowing of these secret payments, to find in favour of the cladding manufacturers because there was no evidence against them.
  - A manufacturer accused of supplying defective safety masks or equipment to the NHS during the pandemic could make secret payments to employees of the NHS prohibiting them from giving evidence to the Hallett Inquiry which would then, on this basis and in full knowledge of these payments, find that since no evidence had been tendered about the safety of the masks in question, they should be declared to be safe.
8. Approving the applications made by SPR will send the message that the Government approves of wealthy developers using their deep pockets to undermine public inquiries.
9. We reiterate: SEAS is enthusiastically in favour of green energy. It is also in favour of a partial consent being given to the offshore element of these projects. It is in favour of the Secretary of State indicating to SPR that it should adopt an integrated approach to on-shore substations located on a brownfield site which does not despoil the countryside and decimate local areas of population.

### ***Biodiversity***

10. We attach to this submission a report prepared at the request of SEAS (Annex B) which identifies a deficiency gap in the evidence collected to date. The report speaks for itself and identifies a major gap in the evidence which must be completed.
11. Importantly, it also identifies a serious issue that SPR ignored in its evidence to the Inspectors. SEAS do not of course know what the Inspectors make of this deficiency. However, the report is a good illustration of the effects of SPR's strategy of paying-off landowners. Had these landowners not been pressured into not participating in the public inquiry then it is, at the least, very likely that they would have adduced expert evidence upon the biodiversity issue which would have starkly contrasted with SPR's decision not to put in any evidence at all. No doubt SPR decided not to adduce evidence assuming (correctly) that their omission would not be challenged by affected landowners.

Energy. Offshore wind farms

## Coast is far from clear for green power projects

Local opposition to onshore elements will test Tories' commitment to net-zero goal

LAURA HUGHES — THORPENESS  
NATHALIE THOMAS — EDINBURGH

The UK's drive to decarbonise the energy sector faces a test within weeks when a minister rules on whether two wind farms off a tranquil area of England's east coast should go ahead in the face of strong opposition from locals about onshore elements of the projects.

ScottishPower's planning application for the two projects off the coast of Suffolk includes permission for cables and two eight-acre substation complexes to be built on land. The projects will be the latest test of rural communities' tolerance for hosting the infrastructure required to connect the slew of clean energy projects planned off the North Sea coast to the electricity grid.

In February, villagers in neighbouring Norfolk succeeded in overturning approval for another large offshore wind farm proposed by the Swedish company Vattenfall, following concerns over the visual impact of an onshore substation.

The government has set a target of quadrupling the country's offshore wind capacity to 40 gigawatts by the end of the decade as part of its goal to decarbonise Britain's electricity system by 2035.

But Suffolk residents have identified at least eight proposed energy projects they claim could "irrevocably damage" coastal areas, unless the onshore infrastructure to connect them to the electricity grid is co-ordinated and reduced. National Grid is also planning to install several subsea cables to trade electricity with continental Europe.

Energy companies and environment campaigners acknowledge privately that if not handled carefully, opposition in the east of England could lead to "onshore wind 2.0". David Cameron, former prime minister, banned subsidies for the development of onshore wind farms in 2016 under pressure from Conservative backbench MPs.

This time the opponents include a cabinet minister, Thérèse Coffey, the local MP and work and pensions secre-



tary, who has backed the campaign for alternative sites for the substations. Suffolk residents argue the onshore infrastructure required for the two ScottishPower schemes would "gouge a motorway-sized scar" through the frag-



ile cliffs of Thorpeness and the county's historic coastal towns. They will also require a large substation complex in the medieval Suffolk village of Friston.

The two projects, East Anglia One North and East Anglia Two, require a development consent order from business secretary Kwasi Kwarteng by March 31. The plans have also placed the Conservative party at odds with some of its traditional supporters in the hitherto extremely loyal constituency of Suffolk Coastal.

Fiona Gilmore, who heads local campaign group Suffolk Energy Action Solutions, stressed it was not opposed to the wind farms but believed it was possible to connect projects and export their electricity to a single onshore hub on a brownfield site. In her view, "local communities are being subjected to the

careless and callous treatment of developers who are using this countryside as a dumping ground for their green gold, their wind energy".

Alexander Gimson is chair of Warden Trust, a charity offering recreational facilities for people with disabilities along the area's cliffs. Under ScottishPower's plans, construction of a cable 100 yards from the charity's headquarters would last three years. Gimson argued its proximity and the disruption threatened the trust's future.

Gimson said his mother, who owns the charity and its land, was initially offered in excess of £50,000 by ScottishPower to allow it to carry out works such as moving fencing and stables. The sum included an "incentive payment" for

**'Developers are using this [area] as a dumping ground for their green gold, their wind energy'**

signing a contract. A letter sent to Gimson's mother by lawyers acting on behalf of ScottishPower stated that in accepting the payments, Gimson would not be able to "make a representation" regarding the development consent orders for the two projects. He believes this would be akin to a "gagging order".

ScottishPower said: "We refute the claims made in relation to our approach to land agreements in the strongest possible terms, including any suggestion we are trying to undermine the planning process. These claims are misleading and false." It said no such agreements had been entered into. "All of our agreements are prepared in line with the highest industry standards."

Suffolk residents said they would be less upset if the county were to benefit from an offshore wind jobs boom but feared it would get only "crumbs from the table", with a limited number of operations and maintenance roles.

"If somebody said to me that is what East Suffolk is going to get I might be a little less opposed to the onshore part of these projects," said Michael Mahony, who lives outside Friston. The dispute also highlights the headache for the Conservatives when it comes to squaring the government's net-zero ambitions with the concerns of its grassroots base.

Driving the message home: Fiona Gilmore puts up protest signs in Snape, Suffolk — SIBBIE

## **Annex B**

**Proposal to the Secretary of State for Business, Energy and  
Industrial Strategy: request for provision of full ecological  
information to inform consenting decision**

**PROPOSAL TO THE SECRETARY OF  
STATE FOR BUSINESS, ENERGY AND  
INDUSTRIAL STRATEGY: REQUEST FOR  
PROVISION OF FULL ECOLOGICAL  
INFORMATION TO INFORM  
CONSENTING DECISION**

EAST ANGLIA ONE NORTH OFFSHORE WINDFARM

EAST ANGLIA TWO OFFSHORE WINDFARM

SUFFOLK ENERGY ACTION SOLUTIONS (SEAS)

REF. NO. 6039-LLB-RP-EC-0001

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6039 - EAST ANGLIA ONE NORTH OFFSHORE WINDFARM (SEAS)

STATUS: FOR PLANNING

P03	31.01.22	SD	-
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## 1. INTRODUCTION AND SCOPE OF THIS PROPOSAL

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- 1.1 Lloyd Bore Ltd were commissioned on behalf of Suffolk Energy Action Solutions (SEAS) to produce this Proposal.
- 1.2 This Proposal is addressed to The Secretary of State (SoS) for Business, Energy and Industrial Strategy (hereafter referred to as "the SoS").
- 1.3 This Proposal relates to the ecological information submitted to the Planning Inspectorate (PINS) by the Applicant, Scottish Power Renewables (SPR), in relation to the East Anglia ONE North Offshore Windfarm (EA1N) and East Anglia TWO Offshore Windfarm (EA2) applications.
- 1.4 The ecological documentation submitted with the EA1N and EA2 applications appears to be the same, with only some very minor differences between the drawing versions cited on the submitted Figures and no discernible difference in the content of these drawings. All commentary on the submitted ecological documentation set out in this Proposal therefore relates to **both** the EA1N and EA2 applications.
- 1.5 This Proposal concerns the onshore elements of the above-referenced energy infrastructure proposals (i.e., terrestrial ecology only). It does not concern, address or otherwise deal with the offshore elements of the above-referenced proposed energy infrastructure scheme.
- 1.6 I start by expressing my surprise at the dearth of evidence that has been submitted and considered by the Authority in relation to biodiversity matters. As pointed out within this Proposal, the project will involve a very long and broad cable trench being cut across approximately 9km of land, and the clearance of associated works footprints for above-ground energy infrastructure and associated working easements, across a ten year works period, which will result in loss and fragmentation of a range of habitat types, some of which are likely to be of significant ecological importance (e.g., existing woodland, hedgerows and River Hundred). If the applications are consented, it will adversely affect the land of a large number of landowners and have adverse ecological effects upon land owned by these parties. In an inquiry of this sort, it would be normal for affected landowners to have submitted evidence, and especially expert evidence, setting out the ecological harm that the SPR projects could cause. No such evidence has been submitted. One effect of this is that there is far less evidence available than I would have expected to be able to weigh against the position of SPR. For the purposes of clarity, SPR's position, which I strongly disagree with, is that no further ecological evidence, assessment or mitigation detail is required prior to determination of the applications. My report therefore identifies the work that the SoS should undertake and require the Applicant to provide to fill this clear and serious deficiency in the present state of the evidence.
- 1.7 I also start by emphasising that the threat to biodiversity is greatly exacerbated by the cumulative impact of multiple trenches and nine substations and interconnectors in the same area. The impacts addressed in this Proposal are limited to the East Anglia ONE North Offshore Windfarm and East Anglia TWO Offshore Windfarm applications but would inevitably be significantly greater as the other projects proceed. An annex dealing with cumulative effects (Annex C) is attached with the SEAS submission that this Proposal document forms a part of.
- 1.8 The SoS's review of the submitted ecological information will need to carefully consider whether the proposed development will result in any adverse effect on site integrity (AEOI) for the suite of

Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar sites that are present within the ecological Zone of Influence of the proposed development. However, due to time constraints associated with assembling this representation, this Proposal does not review or address the adequacy of the submitted Habitats Regulations Assessment.

#### 1.9 This proposal seeks to: -

- Highlight the absence of sufficient ecological information to allow determination of the submitted applications for the onshore elements of the proposed project. This includes significant issues associated with the limited duration of the surveys conducted, the incomplete spatial coverage of the survey work undertaken and the deviation from industry standard survey methods and approaches, which means that the survey work completed often does not accord with industry-standard good practice;
- Set out the ecological survey and assessment work that will need to be completed prior to determination of the application to provide an adequate ecological baseline data set and an adequate ecological impact assessment to inform a consenting decision;
- Highlight the legal duties that require consideration of this information and applicable national planning policy and guidance that strongly advises pre-determination consideration of this information; and
- Formally request that the SoS require the Applicant to provide this information, to allow the SoS to reach an informed consenting decision based on adequate ecological information.

#### 1.10 This proposal has been informed by a review of: -

- Publicly available information, including details of the proposed project and the ecological information, commentary and responses submitted by the Applicant, Suffolk County Council, Natural England and other Interested Parties, as available through the PINS web pages for these applications (<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/east-englia-one-north-offshore-windfarm/>) (EA1N) and <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/east-englia-two-offshore-windfarm/?ipcsection=overview> (EA2));
- Publicly available information regarding statutory designated sites, Habitats of Principal Importance as defined under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 (hereafter referred to as "priority habitats"), legally protected species, Species of Principal Importance as defined under Section 41 of the NERC Act 2006 (hereafter referred to as "priority species") and other important and notable ecological features; including information available through the Department for Environment, Food and Rural Affairs (Defra)'s Multi-Agency Geographic Information for the Countryside (MAGIC) website; and
- Records of presence of legally protected and priority species within the footprint or likely ecological Zone of Influence (Zoi) of the proposed scheme, as provided by via SEAS. These records have been sourced from local residents, by SEAS.

## 2. THE PROPOSED SCHEME

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### 2.1 As per the PINS page for EA1N, the proposed development comprises:

*"An offshore wind farm which could consist of up to 67 turbines, generators and associated infrastructure, with an installed capacity of up to 800MW, located 36km from Lowestoft and 42km from Southwold. From landfall the cables will be routed underground to an onshore substation, which will in turn connect into the national electricity grid via a National Grid substation and cable sealing end compounds, the latter to be owned and operated by National Grid."*

### 2.2 As per the PINS page for EA2, the proposed development comprises:

*"An offshore wind farm which could consist of up to 75 turbines, generators and associated infrastructure, with an installed capacity of up to 900MW, located 37km from Lowestoft and 32km from Southwold. From landfall, the cables will be routed underground to an onshore substation which will in turn connect into the national electricity grid via a National Grid substation and cable sealing end compounds, the latter to be owned and operated by National Grid."*

### 2.3 The submitted information confirms that the landfall point for the cables will be in the vicinity of Sizewell and Thorpeness in Suffolk.

### 3. STATUTORY DUTIES AND APPLICABLE GUIDANCE AND STANDARDS

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#### LEGISLATION

- 3.1 Under The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the '2017 Regulations') (as amended) (hereafter referred to as the "EIA Regulations"), the decision maker has a statutory duty to ensure that all decisions are informed by adequate baseline information, to ensure that the environmental (ecological) effects of a proposed scheme can be adequately understood and assessed.
- 3.2 As per UK Government standing advice, *"The aim of Environmental Impact Assessment is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process."*
- 3.3 Whilst consenting decisions in relation to Nationally Significant Infrastructure Projects (NSIPs) are made by the SoS rather than local planning authorities, the above principles still apply to the determination of NSIP applications.
- 3.4 The Conservation of Habitats and Species Regulations 2017 (as amended) (hereafter referred to as the "Habitats Regulations") and Wildlife and Countryside Act 1981 (as amended), in combination, afford legal protection to a range of designated sites, certain habitats and certain species. Decision making bodies have statutory duties to ensure that the favourable conservation status / long-term viability of sites, habitats and species covered by this legislation are properly assessed when determining planning applications and development consents and that they can satisfy themselves that key legal tests, such as the Favourable Conservation Status (FCS) test for European Protected Species (EPS) can be met. This requires consideration of adequate baseline information and mitigation detail to be able to determine whether the predicted ecological effects of a proposed development can be clearly understood and are acceptable.
- 3.5 Section 41 (S41) of the Natural Environment and Rural Communities (NERC) Act (2006) requires the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England. The S41 list is used to guide decision-makers, including local and regional authorities, in implementing their duty under Section 40 of the act to have regard to the conservation of biodiversity in England when carrying out their normal functions. Provision of sufficient baseline information with planning and development consent applications, regarding relevant priority habitats and species, is required to allow the decision maker to adequately assess the predicted ecological effects of development upon habitats and species listed on Section 41.
- 3.6 It is concluded, based on the review of evidence that has informed this Proposal, that insufficient baseline ecological survey data and insufficient detail of proposed mitigation has been submitted by the Applicant to allow the SoS to assess the ability of the projects, and by association the decision maker, to meet key legal tests and duties with regards to legally protected species and priority habitats and species under the above-referenced legislation.

## APPLICABLE UK GUIDANCE AND STANDARDS

- 3.7 Paragraphs 4.1.3 and 4.1.4 of the Department for Energy and Climate Change's *Overarching National Policy Statement for Energy (EN-1)*, states: -
- "4.1.3 In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the IPC should take into account:*
- "... its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.*
- "4.1.4 In this context, the IPC should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels. These may be identified in this NPS, the relevant technology-specific NPS, in the application or elsewhere (including in local impact reports)."*
- 3.8 It is concluded, based on the review of evidence that has informed this Proposal, that insufficient baseline ecological survey data and insufficient detail of proposed mitigation has been submitted by the Applicant to allow the SoS to understand the potential adverse impacts of the proposals and weigh these against the potential benefits of the proposals.
- 3.9 It is also highlighted that, deviating from the Chartered Institute of Ecology and Environmental Management (CIEEM), which the submitted documentation incorrectly claims compliance with, the submitted ES does not provide any assessment of the geographic level of importance of the important ecological features (aka receptors) assessed. To understand the geographic scale of a predicted ecological effect, it is essential to understand the geographic level of importance assigned to the ecological feature being assessed. Thus, the absence of this detail from the ES means that the adverse effects of the proposed developments cannot be properly assessed in line with paragraph 4.1.4 of EN-1.
- 3.10 Paragraphs 5.3.7 and 5.3.9 of EN-1 state that:
- "5.3.7 As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.4 above); where significant harm cannot be avoided, then appropriate compensation measures should be sought.*
- "5.3.8 In taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment."*
- 3.11 It is concluded, based on the review of evidence that has informed this Proposal, that insufficient information has been submitted on the consideration of alternative cable routes. The cable route at Aldringham will result in the loss of lowland mixed deciduous woodland (a priority habitat), hedgerow (a priority habitat) and grazing marsh. I have not been able to locate any detailed consideration of potential alternatives to these significant ecological impacts in the submitted documentation. Thus, it is concluded that the ability of the SoS to assess reasonable alternatives to these ecologically significant habitat impacts is severely compromised by the absence of documented assessment of potential reasonable alternatives.
- 3.12 Paragraph 5.3.17 of EN-1 states:

*"Other species and habitats have been identified as being of principal importance for the conservation of biodiversity in England and Wales and thereby requiring conservation action. The IPC should ensure that these species and habitats are protected from the adverse effects of development by using requirements or planning obligations. The IPC should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits (including need) of the development outweigh that harm. In this context the IPC should give substantial weight to any such harm to the detriment of biodiversity features of national or regional importance which it considers may result from a proposed development."*

- 3.13 As emphasised in my above comments and considering the requirements of Para. 5.3.17 of EN-1, insufficient information has been submitted to allow grant of planning permission. In relation to *"species and habitats... identified as being of principal importance for the conservation of biodiversity in England and Wales"* (i.e., priority habitats and species under the NERC Act 2006), insufficient baseline data, mitigation detail, consideration of the geographic level of importance and consideration of alternative options has been submitted to allow an adequate understanding of the impacts of the proposed developments upon these habitats and species.
- 3.14 Whilst some further detail of proposed mitigation has been submitted in the *Changes to Mitigation Measures Tracking List* (Version 02, dated 4th March 2021), this document does not contain sufficient detail of proposed mitigation, including for e.g., rare bat species that are likely to be of at least county level importance (see later detail in this Proposal), to allow the significance of the predicted ecological effects upon priority habitats and species to be understood. For this reason, it is considered that there is insufficient information available to allow grant of planning permission.
- 3.15 Paragraph 99 of ODPM Circular 06/2005 (Defra Circular 01/2005) *Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System*, which is a material consideration in the determination of planning applications and development consents, states that:
- "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted."*
- 3.16 Section 9.2.4 of British Standard 42020: 2013: *Biodiversity - Code of practice for planning and development*, which represents national good practice guidance, reiterates the above point and goes on to provide examples of exceptional circumstances, none of which are considered applicable to the submitted applications.

## 4. SUMMARY OF SUBMITTED ECOLOGICAL INFORMATION

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4.1 The ecological documentation submitted with the EA1N and EA2 applications appears to be the same, with only some very minor differences between the drawing versions cited on the submitted Figures and no discernible difference in the content of these drawings. These very minor differences in Versions of drawings are incorporated into the below list of documents reviewed, with both versions cited.

4.2 It is emphasised that all commentary on the submitted ecological documentation set out in this Proposal therefore relates to **both** the EA1N and EA2 applications.

### 2017 SCOPING REPORT

4.3 Section 3.6 of the *East Anglia ONE North Offshore Windfarm Scoping Report* (SPR, 2017) provides a high-level summary of: -

- The terrestrial ecology baseline for the onshore study area\* for the proposed scheme;
- Further survey work required to "*define the baseline ecology and to inform the assessment of potential impacts in the relation to the confirmed locations of the onshore infrastructure*"; and
- Potential ecological impacts during construction, operation and decommissioning.

4.4 Section 3.6.1 of the above-referenced report identifies the following important ecological features within the onshore study area and a maximum 3km search radius around the study area: -

- Seven statutory designated sites of international importance for nature conservation within the study area and a 3km radius around the study area (see Figure 1, below);
- Six statutory designated sites of national importance for nature conservation within the study area and a 3km radius around the study area (see Figure 1, below); and
- Records of legally protected species within and up to 2km from the study area, comprising records of: great crested newt (*Triturus cristatus*) (a EPS); reptiles (including common lizard *Zootoca vivipara*, grass snake *Natrix helvetica*, adder *Vipera berus* and slow worm *Anguis fragilis*); otter (*Lutra lutra*) (a EPS); badger (*Meles meles*); water vole (*Arvicola amphibius*); bats ("all species" – all of which are EPS); and brds (red kite *Milvus milvus*, white-tailed eagle *Haliaeetus albicilla*, and goshawk *Accipiter gentilis*).

4.5 The legal protection afforded to the above-listed species is summarised in Appendix 1.

*\*The onshore study area is defined, in the above-referenced report, as: "All onshore areas being considered for the placement of onshore infrastructure or temporary construction consolidation sites. This includes areas being considered for National Grid infrastructure, East Anglia ONE North onshore substation, onshore cable corridor and landfall" (SPR, 2017).*

Figure 1 Copy of Table 3.10 Statutory Designated Sites within 3km of the Onshore Study Area (SPR, 2017).

Designated site	Key features	Proximity to onshore study area
Minsmere to Walberswick Ramsar, SPA and SAC	<ul style="list-style-type: none"> <li>Nationally important numbers of breeding and wintering birds;</li> <li>Annual vegetation of drift lines (vegetated shingle); and</li> <li>European dry heath.</li> </ul>	1.8km
Alde-Ore Estuary Ramsar, SPA, SAC, SSSI	<ul style="list-style-type: none"> <li>Nationally important numbers of breeding and wintering birds;</li> <li>Estuaries;</li> <li>Atlantic salt meadows; and</li> <li>Mudflats</li> </ul>	2km
Sandlings SPA	<ul style="list-style-type: none"> <li>Breeding populations of nightjar and woodlark; and</li> <li>Acid grassland, heath, scrub, woodland (including commercial forest), fen, open water and vegetated shingle.</li> </ul>	Within study area
Leiston to Aldeburgh SSSI	<ul style="list-style-type: none"> <li>Acid grassland, heath, scrub, woodland, fen, open water and vegetated shingle.</li> </ul>	Within study area
Sizewell Marshes SSSI	<ul style="list-style-type: none"> <li>Lowland unimproved wet meadow.</li> </ul>	400m
Minsmere to Walberswick Heath and Marshes SSSI	<ul style="list-style-type: none"> <li>Mudflats, shingle beach, reedbeds, heathland, and grazing marsh.</li> </ul>	1.8km
Snape Warren SSSI	<ul style="list-style-type: none"> <li>Lowland heathland.</li> </ul>	2.3km
Gromford Meadow SSSI	<ul style="list-style-type: none"> <li>Unimproved base-rich marsh on an alluvial soil.</li> </ul>	2.6km

4.6 Section 3.6.1 of the scoping report goes on to identify the further ecological survey work proposed to "define the baseline ecology and to inform the assessment of potential impacts in the relation to the confirmed locations of the onshore infrastructure".

4.7 This proposed ecological survey work is summarised in Figure 2, below.

Figure 2 Copy of Table 3.11 Proposed Onshore Ecological Surveys (SPR, 2017).

Survey	Proposed surveying period	Summary of survey
Extended Phase 1 Habitat Survey	March 2018	Survey will cover the onshore transmission works plus a 50m buffer. The survey will also consider waterbodies within 250m of the onshore cable corridor and 500m of the onshore substation and National Grid infrastructure. The findings of this survey will inform the requirements for further species-specific surveys (i.e. Phase 2 surveys).
Badger surveys	March – April 2018	Survey will cover all badger setts identified during the Extended Phase 1 survey area (i.e. onshore infrastructure plus a 50m buffer).
Water vole and otter presence / absence surveys	March – April 2018	Surveys will focus on all suitable aquatic habitats which have the potential to be affected by the project.

Survey	Proposed surveying period	Summary of survey
Breeding bird surveys	March – April 2018	Surveys will concentrate on those habitats noted as supporting breeding birds which have the potential to be affected by the project.
Great crested newt presence / absence surveys	March – June 2018	Surveys will be undertaken of those waterbodies identified as having suitability to support breeding populations of great crested newts (within 250m of the onshore cable corridor and 500m of the onshore substation and National Grid infrastructure).
Reptile presence / absence surveys	March – June 2018	Surveys will focus on all suitable habitats that may support significant populations of reptiles which have the potential to be affected by the project.
Dormice presence / absence surveys	April – May 2018	Surveys will concentrate on all suitable woodland habitats which have the potential to be affected by the project.
Invertebrate (terrestrial and aquatic) surveys	April – May 2018	Surveys of all terrestrial and aquatic habitats which may support rare or notable invertebrates and which have the potential to be affected by the project.
Bat activity surveys	April – June 2018	Surveys will focus on all suitable commuting / foraging habitats which may be affected by the project.
Bat emergence / re-entry surveys	April – June 2018	Surveys will focus on those features (i.e. structures / trees) that have been assessed as having medium or high potential to support roosting bats.
Botanical surveys (including invasive species)	April – June 2018	Surveys will be undertaken of those habitats noted as containing designated habitat types or which may contain rare or notable plants which have the potential to be affected by the project.
Wintering bird surveys	November 2018 – February 2019	Surveys will cover all habitats identified as suitable for supporting wintering birds. Surveys would include observational and transect recording to understand the area's usage by wintering bird species.

- 4.8 Given that no new or different onshore ecological information appears to have been submitted in relation to EA2, the above list of recommended surveys is also considered applicable to the EA2 project.
- 4.9 The above represents an extensive range of survey work proposed to establish an ecological baseline to inform an Environmental Impact Assessment (EIA) under the EIA Regulations and thereby inform the decision of the SoS in relation to the environmental impacts of the proposed development. As per Table 3.11, it was proposed that these surveys would be undertaken across the period March 2018 to February 2019.
- 4.10 Sections 3.6.2.1, 3.6.2.2 and 3.6.2.3 of the scoping report then go on to provide a preliminary summary of potential ecological impacts of the proposed development during construction, operation and decommissioning, respectively.
- 4.11 Section 3.6.2.1 of the report states:
- 'The key aspects of construction with respect to onshore ecological receptors are the construction of the onshore substation and National Grid infrastructure, the excavation works (and supporting activities) associated with the onshore cable corridor and landfall during construction.'*
- 4.12 This section of the report identifies the following potential construction stage impacts: -
- "There is the potential for direct impacts where ecological receptors and the footprint of the proposed works overlap leading to potential loss or fragmentation of habitats and the risk of killing protected species, as well as indirect impacts where the proximity of the works may lead to a disturbance / displacement effect on protected species. In addition, should invasive species be present within the onshore construction footprint there is the potential risk of spreading invasive species."*
- 4.13 Section 3.6.2.2 identifies the following potential operational stage impacts: -
- "The permanent above ground presence of the onshore substation and National Grid infrastructure has the potential to lead to the permanent loss of areas of ecological value or fragmentation of habitats depending on the preferred locations for development. Operational noise associated with the onshore substation and National Grid infrastructure has the potential to cause disturbance effects depending on their proximity to noise sensitive ecological receptors. Areas above the buried cable systems would return to their previous land use and would not represent permanent loss or fragmentation of habitats."*
- 4.14 In relation to potential impacts during decommissioning, Section 3.6.2.3 states: -
- "Potential impacts during decommissioning impacts will be assessed as outlined in section 1.6.3.9. It is anticipated that the decommissioning impacts would be similar in nature to those of construction, although the magnitude of effect is likely to be lower."*
- 4.15 Section 1.6.3.9 of the Scoping Report acknowledges that the requirements for decommissioning works cannot be accurately determined, but does state that:
- "For the onshore infrastructure it is likely that the onshore substation and National Grid infrastructure would likely be removed and reused or recycled. It is expected the onshore cables would be removed from ducts and recycled, with the transition bays and jointing bays and ducts left in situ."*

- 4.16 Section 3.6.3 goes on to make a generic commitment to development of mitigation *measures "once the baseline ecological conditions are confirmed and the assessment of potential impacts has been undertaken."* This Section also states that *"Mitigation measures will be discussed and agreed with stakeholders through the subsequent stages of the assessment."*

## 2019 ENVIRONMENTAL STATEMENT

- 4.17 In considering the ecological information submitted with the application, the following documentation submitted as part of the Environmental Statement (ES) has been reviewed: -
- 6.2.23.4 Environmental Statement - *Figure 23.4 - Nightjar Observations 2018*
  - 6.2.23.5 Environmental Statement - *Figure 23.5 - Turtledove Observations 2018*
  - 6.2.19.4 Environmental Statement - *Figure 19.4 - Sensitive Ecological Receptors*
  - 6.2.22.10 Environmental Statement - *Figure 22.10a-f - eDNA Survey Results*
  - 6.2.22.3 Environmental Statement - *Figure 22.3 - Desk Study Results*
  - 6.2.22.4 Environmental Statement - *Figure 22.4a-f - Extended Phase 1 Habitat Survey Results*
  - 6.2.22.1 Environmental Statement - *Figure 22.1 - Designated Sites (Statutory)*
  - 6.2.22.2 Environmental Statement - *Figure 22.2 - Designated Sites (Non-Statutory)*
  - 6.2.23.7 Environmental Statement - *Figure 23.7 - Marsh Harrier Observations 2018*
  - 6.2.23.9 Environmental Statement - *Figure 23.9 - Other Target Species Observations 2018*
  - 6.2.23.8 Environmental Statement - *Figure 23.8 - Other Schedule 1 Target Species Records 2018*
  - 6.2.23.6 Environmental Statement - *Figure 23.6 - Nightingale Observations 2018*
  - 6.2.23.11 Environmental Statement - *Figure 23.11 - RSPB Nightjar Observations (2009-2012, 2014, 2016-2018).*
  - 6.2.22.8 Environmental Statement - *Figure 22.8a-g - Bat Survey Results*
  - 6.2.23.12 Environmental Statement - *Figure 23.12 - RSPB Turtle Dove Observations (2012-2013, 2015-2018)*
  - 6.2.23.14 Environmental Statement - *Figure 23.14 - RSPB Dartford Warbler Observations (2009-2019)*
  - 6.2.23.2 Environmental Statement - *Figure 23.2 - Onshore Ornithological Designated Sites within 10km*
  - 6.2.23.15 Environmental Statement - *Figure 23.15 - Wintering Bird survey Compartments (2018-2019)*
  - 6.2.22.9 Environmental Statement - *Figure 22.9a-f - Water Vole and Otter habitat Suitability Results*
  - 6.2.23.10 Environmental Statement - *Figure 23.10 (EA1N) / Figure 23.10a-f (EA2)- RSPB Woodlark Observations (2009-2018)*

- 6.1.23 Environmental Statement - *Chapter 23 - Onshore Ornithology*
- 6.1.22 Environmental Statement - *Chapter 22 - Onshore Ecology*
- 6.2.22.6 Environmental Statement - *Figure 22.6a-f - Badger Survey Results*
- 6.2.22.7 Environmental Statement - *Figure 22.7a-f (EA1N) / Figure 22.7a-g (EA2) - Bat Roost and Commuting Foraging Habitat Results*
- 6.2.23.1 Environmental Statement - *Figure 23.1 - Onshore Ornithology Study Area*
- 6.2.23.3 Environmental Statement - *Figure 23.3 - Woodlark Observations 2018*
- 6.2.23.13 Environmental Statement - *Figure 23.13 - Nightingale Observations (2009-2018)*
- 6.3.22.4 Environmental Statement - *Appendix 22.4 - eDNA Survey Report*
- 6.3.22.6 Environmental Statement - *Appendix 22.6 - Bat Survey Report*
- 6.3.23.1 Environmental Statement - *Appendix 23.1 - Onshore Ornithology Consultation Response*
- 6.3.22.3 Environmental Statement - *Appendix 22.3 - Extended Phase 1 Habitat Survey (Part 1 of 2)*
- 6.3.22.3 Environmental Statement - *Appendix 22.3 - Extended Phase 1 Habitat Survey (Part 2 of 2)*
- 6.3.22.5 Environmental Statement - *Appendix 22.5 - Water Vole and Otter Presence or Absence Survey Report*
- 6.3.22.2 Environmental Statement - *Appendix 22.2 - Onshore Ecology Cumulative Impact Assessment with the Proposed East Anglia TWO Project*
- 6.3.23.2 Environmental Statement - *Appendix 23.2 - Onshore Ornithology Cumulative Impact Assessment with the Proposed East Anglia TWO Project*
- 6.3.23.3 Environmental Statement - *Appendix 23.3 - Onshore Ornithology Survey Report: Breeding Season 2018 and 2019*
- 6.3.23.4 Environmental Statement - *Appendix 23.4 - Onshore Ornithology Survey Report: Non-breeding Season 2018 – 2019*
- 6.7 Environmental Statement - *Onshore Schedule of Mitigation*
- 8.7 East Anglia ONE North Offshore Windfarm Outline Landscape and Ecological Management Strategy (EA1N) / 8.7 Outline Landscape and Ecological Management Strategy (EA2).

4.18 The commentary provided in the following sections of this Proposal is informed by a review of the documents and Figures listed above.

4.19 Note that, whilst some of the Figures cited above have been redacted - presumably on account of the sensitivity of the species concerned, corresponding detail with regards to the relevant species / species groups in the submitted documentation listed above has been assessed.

## 5. INFORMATION DEFICIENCIES IN THE SUBMITTED ECOLOGICAL INFORMATION

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- 5.1 Having completed an extensive review of the ecological information submitted by the Applicant, I have identified the following significant deficiencies in the submitted information (for both the EA1N and EA2 applications): -
- A number of surveys scoped in through the Applicant's own Scoping Report and subsequent Extended Phase 1 Habitat Survey Report have not been undertaken or have been undertaken to an insufficient extent or standard. This includes deviations from industry-standard good practice on survey requirements, periods, spatial coverage and methods;
  - In particular, there are significant data deficiencies and survey limitations in relation to bats, including rare bat species - barbastelle (*Barbastella barbastellus*) and lesser horseshoe (*Rhinolophus hipposideros*) bats, which were recorded during the completed survey visits;
  - No ecological survey results, with the exception of an Extended Phase 1 Habitat Survey report, have been submitted to establish the ecological baseline present within the additional site area covered by the East Anglia TWO application;
  - As well as being incomplete and insufficient, the submitted ecological baseline data is now over three years old and will need to be at least partially updated to provide sufficient certainty regarding current ecological baseline conditions;
  - The submitted ES deviates significantly from CIEEM's guidelines on ecological impact assessment as it does not attribute any geographic levels of importance to important species populations recorded and provides scant detail of proposed mitigation measures, which undermine the credibility of the conclusions drawn in relation to predicted ecological effects;
  - Impacts upon ecologically important habitats such as the Hundred River, which will be impacted by open trenching and associated temporary damming works, and the 1.1ha of woodland that will be lost, are insufficient and are not supported by adequate ecological baseline survey data (e.g., detailed botanical survey of woodland areas);
  - Insufficient ecological baseline data, and insufficient detail of proposed mitigation, is provided to justify most of the predictions set out in the ES for residual effects upon important ecological features, with many of the predicted 'minor adverse' residual effects not supported by sufficient information to allow or justify these conclusions;
  - No commitment to achieving Biodiversity Net Gain (BNG) is included with the application, in spite of Natural England, Environment Agency and Suffolk County Council advice to seek this through development and in spite of the substantial scope for the project to achieve this.
- 5.2 I have provided more detailed commentary on these points below, citing the findings of my review of the submitted information and also citing relevant consultee comments where these relate to the overarching points set out above. I have not sought to repeat all of the ecological issues raised by consultees, as these are extensive and do not need to be repeated here. I have instead focussed on what I consider to be some of the principal deficiencies of the submitted ecological information that have a material bearing on the ability of the SoS to determine the application.

## DEFICIENCIES IN ECOLOGICAL BASELINE

- 5.3 Section 7.1 of the submitted *Outline Landscape and Ecological Management Strategy* sets out a number of ecological surveys that the Applicant proposes to undertake after determination of the applications and prior to construction. In accordance with national planning guidance and industry standard good practice, as cited earlier in this Proposal, the completion of these surveys cannot be left until after determination and there are no applicable exceptional circumstances that justify the conditioning and post-permission completion of these surveys.
- 5.4 The results of these surveys need to be submitted with the applications - to provide adequate baseline ecological information to allow a robust ecological impact assessment to be undertaken, to allow the SoS to assess the adequacy of the proposed ecological mitigation measures and the acceptability of the predicted ecological effects of the proposed development.
- 5.5 In the absence of this survey information, it is not possible for the SoS to reach an informed decision regarding the adequacy of the mitigation measures proposed or the acceptability of the ecological effects of the proposed development.
- 5.6 The important ecological features that the Applicant is currently proposing to undertake post-determination survey work for are listed below:
- **"Vegetation (including invasive species)"** (i.e., botanical survey work; note that the applications are not currently supported by any detailed botanical survey work, in spite of the proposed loss of c.1.1ha of lowland mixed deciduous woodland, which is a priority habitat; in the absence of this information, it is not possible to reach any reliable conclusions regarding the presence or likely absence of rare or scarce plants, plant communities or woodland types);
  - **"Badger"** (type of survey not stated, but should include detailed sett survey to categorise setts, determine whether they are main or breeding setts and determine appropriate mitigation);
  - **Bats - "pre-construction bat activity survey" and "potential tree roost inspection"** (note that there is no mention of emergence / re-entry, roost characterisation or other detailed roost survey work for any trees or other features that support potential bat roost features, which would be required to understand the ecological impacts of the scheme upon bat EPS, devise appropriate mitigation and assess whether the Favourable Conservation Status (FCS) of local bat populations can be maintained, all of which are important pre-determination requirements, especially when rare tree-roosting species such as barbastelle have been recorded on site);
  - **"Great crested newts"** (pre-construction population size class assessment survey proposed elsewhere in submitted documentation. Population survey is required to adequately understand the ecological impacts and adequacy of mitigation in relation to this EPS and whether the FCS of the local population of this species can be maintained);
  - **"Reptiles"** (no detail of survey type proposed; full population survey (15-20 visits), rather than seven visit presence / likely absence survey would be required to provide an adequate understanding of the size and ecological importance of any on-site reptile population);
  - **"Wintering birds"** ("If construction activities are due to take place within 200m of survey Compartment 7 at Hawsell's Farm (Figure 23.11) during the midwinter period (November to

*February), the following measures would be employed:... Bird surveys would be undertaken prior to commencement of construction activities to establish the presence of wintering Bewick's swan, as recorded in Compartment 7 during baseline surveys in 2018-19" - these statements indicate that it is not known whether the proposed scheme is likely to pose a risk to the Bewick's swan (*Cygnus columbianus bewickii*), which is listed as critically endangered by the IUCN and is a UK priority species); and*

- **"Breeding birds"** (note that the submitted 2018 breeding bird survey information does provide detailed baseline survey data for the East Anglia ONE application site but does not provide any breeding bird baseline data for the East Anglia TWO application site.

- 5.7 In accordance with national guidance and legal duties, the results of the ecological survey work described above will need to be submitted to PINS prior to the determination of the application, to ensure that the consenting decision is informed by suitable and sufficient ecological baseline data.
- 5.8 Relevant consultation responses are cited in the following paragraphs, where they relate to the overarching points made in this Proposal regarding the deficiencies in the submitted ecological information. I have added bold emphasis to text that I wish to draw the SoS's attention to in light of the ecological information deficiencies I highlight below.
- 5.9 In their consultation response to the Scoping Report, dated 08/12/2017, Natural England stated:
- "The area likely to be affected by the proposal should be **thoroughly surveyed** by competent ecologists **at appropriate times of year for relevant species** and the survey results, impact assessments and appropriate accompanying mitigation strategies included as part of the PEI."*
- 5.10 In their consultation response dated 26/03/2019, Natural England stated: **"The Phase 1 and 2 2018 ecology surveys cover the indicative onshore development area and not the final East Anglia Two Development Area. Further studies should be conducted across the full red line boundary of the site."** In response to this comment, SPR stated: *"A further survey was conducted in March 2019, as presented to the ETG group in May 2019. Results of this Phase 1 Addendum are provided as Annex 1 of the 2018 Extended Phase 1 Habitat Survey (Appendix 22.3)."* This response implicitly acknowledges the fact that, whilst a Phase 1 Habitat Survey of the final East Anglia TWO development area was undertaken, contrary to Natural England's advice, no Phase 2 ecology surveys were undertaken across the site areas that were outside of the 2018 survey scope. This represents a substantial limitation to the spatial coverage of the species surveys undertaken.
- 5.11 In their consultation response dated 26/03/2019, Natural England also state: *"No further reptile surveys will be undertaken as agreed in ETG. Natural England cannot find reference to this within the meeting minutes. We advise reptile surveys are undertaken in accordance with Natural England standing advice."* Natural England also state that: *"...Natural England advise that reptile surveys are completed to quantify potential impacts of the development on reptiles and to plan the mitigation works"; and that "There is currently insufficient information provided to conclude level of effect" (in relation to reptiles).*
- 5.12 The SPR response to this advice does not provide any ecological rationale for scoping out the need for a reptile survey. The SPR response also confirms a commitment to undertake a pre-construction reptile survey, thereby acknowledging that reptile survey work is required to understand the impacts of the proposals upon reptiles and devise appropriate mitigation measures. These are pre-determination information requirements and should not be secured by planning condition or other post-planning agreement. The Applicant has not provided sufficient

information to allow PINS to assess the impacts of development upon reptiles when determining the application.

- 5.13 In the same response, Natural England state: *"Currently insufficient information has been provided to conclude significance of impact to badgers."* The SPR response to this comment acknowledges uncertainty as to whether the known badger setts will be impacted but does not commit to providing any badger sett survey data to inform the determination of the application. An earlier SPR response also clearly states that SPR do not intend to undertake pre-determination surveys of the identified badger setts (which should comprise detailed monitoring to allow characterisation of the sett types and determination as to whether they are main or breeding setts). This means that PINS do not have access to important survey data that would allow proper assessment of the predicted impacts of the project upon badgers.
- 5.14 Natural England also state that: *"Potential impacts to bat habitat should be clearly mapped with roosting, foraging and commuting areas shown in relation to the redline boundary."* The SPR response to this comment cites Figure 22.8, which is a bat survey plan that does not show, quantify or otherwise address impacts upon bat habitats.
- 5.15 The SPR document 6.3.22.1 Appendix 22.1 Onshore Ecology Consultation Responses responds to this Natural England advice by stating: *"Details of the ecological surveys, a clear definition of each survey study area, field surveyors, and their findings from the baseline field surveys are discussed in section 22.3.7 of this chapter."*
- 5.16 The SPR response does not acknowledge the extensive deficiencies in the survey effort (e.g., for bats and wintering birds) submitted with the ES, the absence of surveys for relevant species such as hazel dormice and rare, scarce, priority and legally protected invertebrates and plants.
- 5.17 In their response dated 26/03/2019, The Wildlife Trusts / Suffolk Wildlife Trust stated that: *"We also note from the bat survey report (PEI Appendix 22.4) that a single recording of a lesser horseshoe bat (Rhinolophus hipposideros) was made within the Transect 3 area. There is only one other known location for this species in Suffolk, located in the far west of the county, where a single lesser horseshoe bat was recorded in hibernation for a number of years. Prior to the West Suffolk record that had only been one other recording of this species in the county in the last 100 years. Lesser horseshoe bats are restricted to Wales, the south-west of England and eastwards to Warwickshire, with the closest known colony to Suffolk being over 90 miles away. The recording of this species within Transect 3 is therefore of considerable importance and should be investigated in more detail in order to ensure that no adverse impacts occur on this species, should a hitherto unknown population be present in the area."*
- 5.18 In relation to bats, lesser horseshoe bat and barbastelle are EPS that are rare in the UK and are strictly legally protected under the Habitats Regulations. These species are also both listed on Annex II of the of European Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (better known as the Habitats Directive). Annex II species are those for which core areas of their habitat are designated as sites of Community importance (SCIs) and included in the Natura 2000 network. In accordance with the Directive, these sites must be managed in accordance with the ecological needs of the species.
- 5.19 The submitted bat survey report confirmed that barbastelle bat was recorded across six of the seven transect routes surveyed, with a total of 123 passes recorded. One pass of lesser horseshoe bat was recorded. Importantly, and contrary to the survey period set out in the submitted Scoping

Report and Extended Phase 1 Habitat Survey Reports, the bat activity survey undertaken only covered the period late June to October 2018 (inclusive), with static detector monitoring commencing in late July 2018.

- 5.20 To provide adequate baseline survey data, in accordance with the Bat Conservation Trust's 2016 *Bat Surveys for Professional Ecologists: Good Practice Guidelines*, bat activity surveys for sites and projects of this scale should cover the full typical main bat activity period, from April to October (inclusive). The short duration of the bat activity survey work undertaken, in combination with the fact that the additional site areas within the footprint of the East Anglia TWO were not surveyed, mean that insufficient survey effort has been undertaken to understand site use by foraging and commuting bats, including barbastelle and lesser horseshoe.
- 5.21 In addition, and as stated in the submitted *Bat Report*, the bat detectors used during the bat activity survey were BatBox Duets and the report does not indicate any recording or post-survey analysis of bat calls.
- 5.22 This type of detector requires manual scrolling between peak frequency ranges, rather than automatically tuning to the peak frequencies emitted by the bats recorded during a survey. Analysis of recordings of peak frequencies and call profiles are a core part of identifying bats to species level as each bat species has a distinct peak frequency and call profile. Surveys using BatBox Duets, and other manually tuned detectors, are well known to be ineffective for reliably recording lesser horseshoe bats unless specifically set to the relevant frequency range. This is because the peak frequency of this species' calls is well above the range of most other UK bat species and most bat surveys using this style of detector therefore tend to focus on lower frequency ranges at which it would not be possible to hear this species. It is therefore very likely that the survey work undertaken was not appropriate or sufficient to allow reliable detection of this Annex II species.
- 5.23 In addition to the above, no dedicated bat emergence / re-entry survey was undertaken for any of the trees identified in the submitted ecological information as supporting potential bat roost features and likely to be impacted by the proposed development. The bat survey undertaken does not include sufficient survey effort in relation to roosting bats. This means that it is not possible to fully assess the predicted ecological effects of the development upon bats, including on rare species such as barbastelle and lesser horseshoe.
- 5.24 Based on a review of submitted photographs and maps of on-site habitats, and a review of publicly available aerial imagery, the site appears to provide suitable habitat for barbastelle bat, including woodland and a number of trees that support potential bat roost features.
- 5.25 The development proposals will include the introduction of numerous breaks in hedgerows, which may include those used by commuting bats, potentially including barbastelle and/or lesser horseshoe. There is insufficient submitted baseline information for bats to allow an assessment of whether the proposed development will result in significant fragmentation of important bat commuting routes or the loss of trees supporting bat roosts.
- 5.26 It is unclear, from the submitted information, as to whether the loss of these habitat types will result in significant adverse effects upon the FCS on local populations of barbastelle, lesser horseshoe or other species of bat. Given the high conservation importance of barbastelle and lesser horseshoe, and the fact that presence of these species has been recorded on site, this absence of information and assessment for these species introduces material planning and legal

risks to the proposed development scheme, which have not been properly quantified, let alone addressed.

- 5.27 Insufficient information has been submitted to planning to allow a reliable assessment of the likelihood of the application site being regularly used (including for roosting), the proximity of other potential roosting sites and features or the site's importance for these strictly legally protected bat species. It is therefore concluded that the insufficient information has been provided to allow a robust assessment of the ability of the proposed development maintain the FCS of barbastelle and lesser horseshoe bat.
- 5.28 Decision makers are advised by Natural England that they must consider three key legal tests in relation to EPS when determining a planning application. The FCS test is one of these three tests and it is therefore concluded that insufficient information has been submitted to allow the decision maker to fulfil its duties under the Habitats Regulations. This point also applies for great crested newts, for which insufficient survey information has been submitted.
- 5.29 In their response dated 26/03/2019, Suffolk Wildlife Trust commented that the proposed hazel dormouse survey period was insufficient. In response, the above referenced document states that: ***"All ecological field surveys have been undertaken in accordance with industry accepted guidance and within their optimal surveying windows. Where limitations have been encountered, these have been acknowledged, and are discussed in section 22.3.6.1 of this chapter."***
- 5.30 This statement, and the chapter section it references, do not acknowledge the fact that no hazel dormouse survey has been undertaken, in spite of this survey being scoped in through the Applicant's own submitted Phase 1 Habitat Survey report and the obvious presence of a network of habitats suitable for this species across the site, as shown clearly on publicly available aerial imagery and in numerous photographs of hedgerows, woodland edges and scrub habitats present on the application site.
- 5.31 Suffolk Wildlife Trust also commented on the need for the proposed bat activity survey period to be extended. The SPR report states the following in response: ***"The suite of bat activity and emergence/reentry surveys have been undertaken in accordance with industry accepted guidance. Details of these surveys are provided in section 22.4.3.3 of this chapter."***
- 5.32 The Planning Inspectorate commented (on 20/12/2017) that: ***"The PEI should ensure that, in addition to protected species and designated habitats, potential effects on non-protected species and non-designated habits which may be affected by the Proposed Development are also assessed."***
- 5.33 No such assessment has been submitted by the Applicant.

## HABITAT IMPACTS

- 5.34 In their consultation response date 27/03/2019, Suffolk County Council/Suffolk Coastal District Council state that: ***"The Councils remain unconvinced that the impacts on the Hundred River and the ecological corridor that it provides are clear. Similarly impacts upon woodland and other associated features which might be brought on by the long undergrounding process are still not clear. The Councils would wish to see how disturbance to existing ecological corridors... will be mitigated."***

- 5.35 The SPR response to this comment makes a brief reference to Section 22.6.1.7 of the ES Chapter, which includes very basic detail of proposed mitigation measures.
- 5.36 These mitigation measures are not informed by any baseline ecological measures and therefore any meaningful ecological impact assessment.
- 5.37 As a minimum, the impact assessment and mitigation measures in relation to impacts upon the river should be informed by ecological survey information comprising, but not limited to detailed botanical survey (terrestrial and aquatic), detailed invertebrate survey (terrestrial and aquatic) and a fish habitat assessment and, if required, further fish survey and assessment work.
- 5.38 The submitted otter and water vole survey provides a very limited ecological baseline for the river that focuses on two legally protected species only. This narrow focus on two protected species is insufficient for the purposes of understanding the ecological impacts of the works to the river and the adequacy of the associated proposed mitigation measures.

#### **BIODIVERSITY NET GAIN**

- 5.39 In spite of consultation responses from the Environment Agency, Natural England and Suffolk County Council/Suffolk Coastal District Council advising that the project should seek to deliver a measurable net gain in biodiversity, no information has been submitted by the Applicant and, based on the SPR responses to these comments, it appears that the Applicant has decided not to seek to achieve a measurable biodiversity net gain through development.

## 6. CONCLUSION AND PROPOSAL

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- 6.1 The submitted ecological survey information and mitigation detail is insufficient for the purposes of reaching a planning decision. The predicted ecological effects of the proposed development cannot be reliably understood based on the ecological information submitted.
- 6.2 To allow a determination to be made, the following surveys should be undertaken in relation to both EA1N and EA2: -
- Update habitat survey of entire site area;
  - Detailed botanical survey of arable field margins, woodland and river habitats;
  - Invertebrate Habitat Appraisal followed by terrestrial and aquatic invertebrate surveys;
  - A fish habitat suitability assessment for the impacted section of the River Hundred, followed by detailed fish survey work if required;
  - Updated great crested newt Habitat Suitability Assessment of waterbodies on site and within 250m of site;
  - Great crested newt population survey of suitable waterbodies;
  - Reptile population survey;
  - Breeding bird survey of additional East Anglia TWO site areas;
  - Hazel dormouse presence / likely absence survey;
  - Water vole presence / likely absence survey for all optimal and sub-optimal waterbodies and watercourses (water voles use a diverse range of aquatic and marginal habitats across the year and it is not appropriate to scope out survey of 'sub-optimal' habitats);
  - Badger sett survey, including confirmation of sett types and status (including breeding status);
  - Bat activity survey across the full April to October survey period, using appropriate survey equipment; and
  - Emergence / re-entry and/or detailed elevated inspection surveys of trees suitable for roosting bats that may be impacted by the development.
- 6.3 All of the above survey requirements apply to both EA1N and EA2.
- 6.4 It is strongly recommended that the SoS requires the completion and submission of all surveys listed above, with these surveys covering the entire application site. In the absence of this information, it is concluded that the SoS cannot reach a reliable decision as to the adequacy of the submitted ecological information or the acceptability of the predicted ecological effects of the proposed development.

## 7. APPENDIX 1: SUMMARY OF WILDLIFE LEGISLATION AND NATIONAL PLANNING POLICY

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7.1 The level of protection afforded to protected species varies dependent on the associated legislation. A full list of protected species and their specific legal protection is provided within the Schedules and/or Sections of the associated legislation. Case law may further clarify the nature of the legal protection afforded to species.

7.2 The legal protection afforded to protected species overrides all planning decisions.

### *EUROPEAN PROTECTED SPECIES (EPS) - AND THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017*

7.3 European Protected Species (EPS) are afforded the highest level of protection through the Conservation of Habitats and Species Regulations 2017. EPS are also afforded legal protection by parts of the Wildlife and Countryside Act 1981 (as amended).

7.4 There are a number of relatively common and widespread EPS. These include great crested newt, all species of UK bat, dormice and otter.

7.5 There are other species of plant and animal that are also EPS, but generally these are more scarce / rare and are restricted to narrow geographies or specific habitat types. Examples of this latter group include natterjack toad (*Epidalea calamita*), sand lizard (*Lacerta agilis*) and smooth snake (*Coronella austriaca*).

7.6 In general, any person and/or activity that: -

- Damages or destroys a breeding or resting place of an EPS. (This is sometimes referred to as the strict liability or absolute offence);
- Deliberately captures, injures or kills an EPS (including their eggs);
- Deliberately disturbs an EPS, and in particular disturbance likely to impair animals ability to survive, breed or nurture young, their ability to hibernate and migrate and disturbance likely to have a significant effect on local distribution and abundance;
- Intentionally or recklessly disturbs an EPS while occupying a structure or place used for shelter and/or protection (Wildlife and Countryside Act 1981 (as amended)); and
- Intentionally or recklessly obstructs access to any structure or place that an EPS uses for shelter or protection (Wildlife and Countryside Act 1981 (as amended)).

...may be guilty of an offence.

7.7 The legislation applies to the egg, larval and adult life stages of great crested newts and to bat roosts even when they are not occupied.

7.8 Actions affecting multiple animals can be construed as separate offences and therefore penalties can be applied per animal impacted.

7.9 Under certain circumstances licences can be granted by the Statutory Nature Conservation Organisation (Natural England in England) to permit actions that would otherwise be unlawful.

- 7.10 There are some very specific defences associated with the Conservation of Habitats and Species Regulations 2017. However, these are unlikely to apply to construction related projects. The Sections of the Regulations provide further details of these defences.
- 7.11 The Wildlife and Countryside Act (1981) includes defence for those aspects of the legislation that apply to an EPS. These defences are unlikely to apply to construction related projects and do not apply to those acts included in the Conservation of Habitats and Species Regulations 2017. The Schedules of the Act provide further details of defences.
- 7.12 Local authorities have obligations under sections 40 and 41 of the Natural Environment and Rural Communities Act (NERC) 2006 to have regard to the purpose of conserving biodiversity in carrying out their duties. The majority of EPS are listed on Section 41 the NERC Act.
- WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)*
- 7.13 The level of protection afforded to species listed on the Wildlife and Countryside Act 1981 (as amended) varies considerably.
- 7.14 ‘Fully protected species’, such as water vole, are afforded the highest level of protection. Any person who intentionally kills, injures, or takes ‘fully protected species’, or who intentionally or recklessly damages or destroys a structure or place used for shelter and/or protection, disturbs the animal whilst occupying a structure and/or place used for shelter and protection, or obstructs access to any structure and/or place used for shelter or protection is likely to have committed an offence.
- 7.15 Other species, such as common reptiles, are afforded less protection and for these species it may only be an offence to intentionally or recklessly kill or injure animals.
- 7.16 All active bird nests, eggs and young are protected from intentional destruction. Schedule 1 listed birds are also protected from intentional and reckless disturbance whilst breeding.
- 7.17 Schedule 9 of The Wildlife and Countryside Act lists plant species for which it is an offence for a person to plant, or otherwise cause to grow in the wild. Schedule 9 also lists animals for which it is an offence to release into the wild.
- THE PROTECTION OF BADGERS ACT 1992 (AS AMENDED)*
- 7.18 The Protection of Badgers Act (1992) makes it an offence to wilfully kill, injure, take or ill-treat a badger and to interfere with a sett, including damage, disturbance and obstruction.
- THE PROTECTION OF MAMMALS ACT 1996 (AS AMENDED)*
- 7.19 The Protection of Mammals Act (1996) provides protection for all wild mammals against certain cruel acts with the intention of causing unnecessary suffering, including crushing and asphyxiation.
- THE NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 (AS AMENDED)*
- 7.20 Section 41 (S41) of the Natural Environment and Rural Communities (NERC) Act (2006) requires the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England. The S41 list is used to guide decision-makers, including local and regional authorities, in implementing their duty under Section 40 of the act to have regard to the conservation of biodiversity in England when carrying out their normal functions.
- 7.21 S41 lists 56 habitats and 943 species of principal importance.

- 7.22 Section 42 of the NERC Act relates to Wales.

*ENVIRONMENT PROTECTION ACT 1990 (AS AMENDED)*

- 7.23 Japanese Knotweed is classed as 'controlled waste' and if taken off site it must be disposed of safely at a licensed landfill site. Soil containing rhizome material should also be regarded as contaminated and treated accordingly.

*STATUTORY PROTECTED SITES*

- 7.24 Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) are afforded protection under the Conservation of Habitats and Species Regulations 2017. Ramsar sites, which are designated under the Convention on Wetlands of International Importance (1971), are afforded the same level of protection as SPAs and SACs via national planning policy.
- 7.25 The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 came into force on 28 December 2018. The regulations allow neighbourhood plans and development orders in areas where there could be likely significant effects on a European protected site to be subject to an 'Appropriate Assessment' to demonstrate how impacts will be mitigated, in the same way as would happen for a draft Local Plan or planning application. The Regulations provide the UK Government's legislative response to the April 2018 European Court of Justice judgement in the case *People Over Wind & Sweetman v Coillte Teoranta* ("People over Wind"). These Regulations are of limited relevance for most planning applications. However, the UK Government is yet to issue any formal planning practice guidelines on the application of this new legislation.
- 7.26 Sites of Species Scientific Interest (SSSI) are afforded protection by the Wildlife and Countryside Act 1981 (as amended).
- 7.27 National Nature Reserves (NNRs) are declared by the statutory country conservation agencies under the National Parks and Access to the Countryside Act 1949 (as amended) and the Wildlife and Countryside Act 1981 (as amended). They are managed to conserve their habitats or to provide special opportunities for scientific study of the habitats communities and species represented within them. In addition they may be managed to provide public recreation that is compatible with their natural heritage interests (JNCC website).
- 7.28 Local Nature Reserves (LNRs) are declared by local authorities after consultation with the relevant statutory nature conservation agency under the National Parks and Access to the Countryside Act 1949 (as amended). LNRs are declared and managed for nature conservation, and provide opportunities for research and education, or simply enjoying and having contact with nature (JNCC website).

*NON-STATUTORY PROTECTED SITES*

- 7.29 Non-statutory sites may be given various titles, including Local Wildlife Sites (LWS), Sites of Importance for Nature Conservation (SINCs), Sites of Nature Conservation Importance (SNCIs) and County Wildlife Sites (CWS).
- 7.30 These sites are not normally legally protected but are recognised in the planning system and are afforded some protection through planning policy.

*NATIONAL PLANNING POLICY FRAMEWORK (NPPF)*

7.31 In addition to primary legislation, the government published the National Planning Policy Framework on 19th February 2019.

7.32 Within the NPPF, Chapter 15 is headed *Conserving and enhancing the natural environment* (Paragraphs 170 to 183).

7.33 Of relevance are the following statements: -

*'Planning policies and decisions should contribute to and enhance the natural and local environment by... minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures (Paragraph 170d); and*

7.34 Paragraph 171 states that: -

*'Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.'*

7.35 To protect and enhance biodiversity and geodiversity, plans should: -

*'a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including: the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation (Paragraph 174a); and*

*b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.'* (Paragraph 174b).

7.36 When determining planning applications, local planning authorities should apply the following principles (Paragraph 175): -

*'a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*

*b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*

*c) development resulting in the loss or deterioration of irreplaceable habitats (such as Ancient Woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*

*d) development whose primary objective is to conserve or enhance biodiversity should be supported, while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.'*

- 7.37 In addition to the above, Paragraph 176 confirms that the following should be afforded the same protection as sites that are included within the definition at Regulation 8 of the Conservation of Habitats and Species Regulations 2017 (Special Areas of Conservation, Sites of Community Importance, Special Protection Areas and any relevant Marine Sites): -
- 7.38 *a) potential Special Protection Areas and possible Special Areas of Conservation;*
- 7.39 *b) listed or proposed Ramsar sites; and*
- 7.40 *c) sites identified, or required, as compensatory measures for adverse effects on Special Areas of Conservation, Special Protection Areas, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.*
- 7.41 Paragraph 177 states that: -
- 'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.'*
- 7.42 This statement applies to the assessment of effects in relation to all confirmed, possible, potential and/or proposed designated sites of international importance, as identified in paragraph 12.36 of this Appendix (above).

## Annex C

### **SEAS response to the Secretary of State's letter of 20 December 2021 with regard to Cumulative Impact Deadline: January 31 2022**

This submission responds to the Secretary of State's letter of 20 December 2021 with the purpose of updating him on developments in cumulative impact since the end of the Examination.

1. In December 2021, National Grid Electricity Transmission commenced preliminary onshore surveys and consultations for Sea Link Interconnector **in the immediate area** around the cable corridor and substation site planned for EA1N/2.
2. This followed closely on the heels of National Grid Ventures initial consultations for Nautilus Interconnector and by association Eurolink Interconnector in the Autumn of 2021. These initial consultations and exploratory works were also carried out **in the immediate area** around the cable corridor and substation site planned for EA1N/2.
3. The onshore development of EA1N/2 is therefore **very closely related** to the development of Sea Link, Nautilus and Eurolink with cable trenches and converter stations clearly planned within the same immediate area.
4. The intended sharing of the same National Grid substation to connect into the National Grid means that the interdependency of these projects is undeniable.
5. Despite this clear interdependent association, the full cumulative impacts of the onshore cable routes and converter stations have not been considered within the Examination for the reason that the Applicant has failed to provide the relevant information.

6. On numerous occasions during the Examination, Interested Parties and the Inspectors requested from both ScottishPower Renewables (SPR) and National Grid that the relevant information to determine the cumulative effect be provided and considered. Only partial information was provided.
7. National Grid refused to give any meaningful information about future-consenting projects to enable the Inspectors to make the requisite assessment of cumulative impact. Their failure to present the full picture into the Examination was deliberate obfuscation.
8. SPR's approach was to give the minimum possible information. Their fall back response of 'there remains insufficient information to undertake the assessment requested' was simply not credible having regard to the evidence which is now in the public domain on these projects.
9. Despite Written Questions from the Inspectors to National Grid and SPR, the full scale of energy projects planned for the immediate area was never revealed.
10. The Examinations were thus concluded with no meaningful cumulative impact assessment which has prevented the Inspectors from making the requisite assessment. Given this, the Secretary of State cannot lawfully give consent to this project.
11. Necessarily partial evidence of additional projects, based on information in the public domain was presented by SEAS and others at the onset of the

Examination.<sup>1</sup> National Grid could have placed the full picture before the Examination but chose not to.

12. It is clear that the Energy Hub with multiple projects had been **conceived and planned by the time of the EA1N/2 Examination but neither SPR nor National grid came clean about the plans.**

13. These projects as they are currently being planned cut through the Suffolk Heritage Coast, the fragile Thorpeness Cliffs, the Suffolk Sandlings, an Area of Outstanding Natural Beauty and Site of Special Scientific Interest. Their siting does not minimise the harm to the landscape, far from it, it will devastate the local environment.

14. These projects will adversely affect the integrity of these protected areas. The Suffolk Heritage Coast and the Suffolk Coast and Heaths Area of Outstanding Natural Beauty and indeed the Site of Special Scientific Interest are all designations that reflect national recognition of an area demanding the utmost care and protection.

15. The cable corridor for EA1N/2 alone is 70 metres wide, stretching for 9 km. To put this in perspective the M25 at its widest point with 12 lanes, 2 hard shoulders and central reservation is only 54 metres.

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<sup>1</sup> SEAS CUMULATIVE IMPACT SUBMISSIONS SUBMITTED INTO THE EXAMINATIONS OF EA1N AND EA2

- SEAS Submission Final Submission Re: Cumulative Impact, 6 October 2021 [Link](#)
- SEAS Supplementary Submission on Cumulative Impact Deadline 13 – 5 July 2021 [Link](#)
- Cumulative Impact, Evidence from National Grid, SEAS Deadline 11 Submission [Link](#)
- Cumulative Impact, SEAS Deadline 9 Submission [Link](#)
- Cumulative impact, SEAS Deadline 8 Submission [Link](#)
- Norfolk Vanguard and cumulative impact, SEAS Deadline 6 Submission [Link](#)
- Cumulative Impact, SEAS Deadline 5 and Deadline 1 Submission [Link](#)
- Cumulative Impact, SEAS Deadline 4 Submission [Link](#)
- Cumulative impact, SEAS Deadline 3 Submission [Link](#)
- Cumulative impact, SEAS Deadline 2 Submission [Link](#)
- NGESO and NGETS, Deadline 2 Submission [Link](#)



16. The Nautilus, Eurolink and Sea Link Interconnectors will leave a similar or even bigger scar across the landscape.
17. The cumulative impact of these additional cable corridors could have been adequately identified and assessed by SPR.
18. On 27 January 2022 the Secretary of State made a visit to the proposed site of Sizewell C and announced a £100 billion government subsidy. He spoke about the importance of nuclear energy and thereby signalled that he would give consent to Sizewell C.

19. EDF's Sizewell C and SPR's EA1N/2 undermine the same fragile coastline, spoil the same natural environment, blight many of the same roads and villages and undermine the same nature based tourism economy.

20. In light of this, the Secretary of State must now consider the cumulative impact of all these projects combined with Sizewell C on the locality.

SEAS

January 2022