



16th March 2022

Gareth Leigh
Head of Energy Infrastructure Planning
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Dear Mr Leigh,

**East Anglia TWO Limited (the “Applicant”)
The Proposed East Anglia TWO Offshore Windfarm Order
Application Ref. EN010078**

East Anglia TWO Clarification in relation to Natural England’s letter dated 15th March 2022

We refer to the letter submitted by Natural England (“NE”) on 15th March 2022 in response to your letter of 14th March 2022.

We write to clarify one matter in respect of the proposed East Anglia TWO offshore windfarm project (“EA2”). In the letter NE state that a separation distance of 10km was offered by the Applicant in respect of the EA2 project in their submission on 31st January 2022 (***Applicants’ Responses to the Secretary of State Questions of 20th December 2021 (Item 5)***) (hereinafter referenced as “the 31st January response”). We can confirm that no such submission was made by the Applicant. The Applicant was requested to provide an updated layout plan showing a project boundary at a distance which would result in no disturbance of red throated divers within the Outer Thames Estuary Special Protection Area (the “SPA”). On the basis of prior discussion with NE, this was shown at 10km. It is understood that NE believe that the movement of the boundary to 10km in respect of EA2 is required because it is a feasible alternative in terms of the derogation tests (see paragraph 25 of the 31st January response). NE’s understanding is incorrect.

The Applicant’s position in respect of this matter is set out in paragraph 23 of the 31st January response. If the Secretary of State were to reach a conclusion that there was adverse effect on integrity arising with a separation distance of 8.3 km as the Applicant has applied for, then **as a matter of law the derogation tests set out in Habitats Regulations has to be applied**. Bullet point one of paragraph 23 confirms that a 10km buffer is not a feasible alternative because it would reduce the project capacity and therefore no longer meet the project’s objectives. The basis on which a layout plan showing a 10km separation distance was provided was purely in the context of the derogation tests and the ability to compensate for effects arising.

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The Applicant's submission in relation to this point is supported both by the existing and proposed Defra guidance on compensation. The existing guidance published in 2012, Defra's *Habitats Directive: guidance on the application of article 6(4)*, at paragraph 10, states:

"Alternative solutions are limited to those which would deliver the same overall objective as the original proposal."

Defra consulted last summer on draft further guidance *"Best practice guidance for developing compensatory measures in relation to Marine Protected Areas"*. This included paragraphs 20 and 22.

Paragraph 20: *"Alternative solutions or other means of proceeding should be limited to those which would deliver the same overall outcome for the activity whilst creating a substantially lower risk of impact to the MPA."...*

Paragraph 22: *"In considering alternative means of proceeding, the responsible authority will do so on a case by case basis in a manner proportionate to the scale of the activity and any impacts being considered."*

NE's assumption that a 10km separation distance was endorsed by the Applicant is incorrect. The proper approach which should be considered and on which advice should have been provided by NE was the extent to which the compensation measures which had been offered and secured through the draft Development Consent Order provided adequate compensation for the in combination effects of the proposed East Anglia ONE North offshore windfarm project ("EA1N") and EA2.

In respect of EA2, the worst case displacement is set out in Table 3-5 on page 15 of the Technical Appendix to the 31 January submission. This discloses that at the current application boundary of 8.3km from the SPA, the effective area of displacement would be 1.98km² and the number of individual birds displaced would be 3.96 (of a total current population of the SPA of 18,079 RTDs). At 10km this reduces to 0.9km² and 1.8 individuals displaced.

Table 4-3 of the Technical Appendix of the 31st January response sets out the compensation ratios applicable to the in combination effects of EA1N at various distances together with the in combination application distance for EA2. This discloses that at 8km for EA1N and the EA2 application distance, the combined compensation would be at a ratio of 9:1 in respect of reduced shipping displacement. This, in combination with the other compensation measures, is considered to be more than adequate. Furthermore, the Applicant considers that the compensation measures would actually compensate for EA1N being located even closer to the SPA.

Of particular relevance in this consideration is the exceptionally small area of displacement even on the basis of the crude and unrealistic straight-line approach between the 8.3km (as applied for) and 10km (as suggested by NE). Increasing the buffer from 8.3km to 10km reduces the 'Effective area of displacement' by only 1km² and reduces the 'individuals displaced' by only 2.16 birds, but significantly, removes 73.5MW of renewable energy capacity. Having regard to proportionality, the measures proposed are more than adequate to provide the necessary compensatory measures for the effects identified above together with those of EA1N.

We would be grateful if you could kindly acknowledge safe receipt of this letter.



**SCOTTISHPOWER
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Yours faithfully



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East Anglia TWO Limited**

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