



# Department for Energy Security & Net Zero

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(By e-mail only:

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Dear Rachael Devine,

## **PLANNING ACT 2008**

### **EAST ANGLIA ONE NORTH OFFSHORE WIND FARM ORDER 2022**

### **EAST ANGLIA TWO OFFSHORE WIND FARM ORDER 2022**

### **APPROVAL OF THE KITTIWAKE IMPLEMENTATION AND MONITORING PLAN UNDER PARAGRAPH 3, PART 1 OF SCHEDULE 18 TO THE ORDERS**

1. The East Anglia ONE North (“EA1N”) and the East Anglia TWO (“EA2”) Offshore Wind Farm Orders 2022 (“the Orders”) contain requirements and conditions that the undertaker must comply with before certain works within the authorised developments as defined in the Orders can commence.
2. On 12 December 2022 ScottishPower Renewables (“the Applicant”) made a request to the Secretary of State for Energy Security & Net Zero (“the Secretary of State”) for approval of the Kittiwake Compensation Steering Group (“KCSG”) Plan of Work for the compensation measures as required by paragraph 2 of Part 1 of Schedule 18 to the Orders.
3. On 16 January 2023 the Secretary of State approved the KCSG Plan of Work, which sets out the KCSG terms of reference, the membership, the schedule of meetings, timetables, reporting and review periods, and the dispute resolution mechanism.
4. On 12 June 2023, the Applicant submitted a joint request for the approval of the Kittiwake Implementation and Monitoring Plan (“KIMP”) for the Flamborough and Filey Coast Special Protection Area as required by paragraph 3 of Part 1 of Schedule 18 to the Orders. The Secretary of State refused this request on 13

November 2023 because the Applicant's KIMP proposed 15 nest spaces, against the requirement for 100 nesting spaces.

5. On 14 March 2024, the Applicant submitted a new joint request for the approval of the KIMP ("the KIMP Approval Request"). The documents provided included the Kittiwake Steering Group Agreement Log for EA1N and EA2, and two KIMPs one for EA1N and one for EA2.
6. The Secretary of State has now considered the KIMP Approval Request.

### **Requirements under paragraph 3 of Part 1 of Schedule 18 to the Orders**

7. Paragraph 3 of Part 1 of Schedule 18 to the Orders states that:

*"Following consultation with the KCSG, the KIMP must be submitted to and approved by the Secretary of State (in consultation with the Marine Management Organisation (MMO), the local planning authority for the land containing the artificial nest site, and the relevant statutory nature conservation body). The KCSG must be consulted further as required during the approval process. The KIMP must be based on the strategy for kittiwake compensation set out in the kittiwake compensation plan and include-*

- (a) details of the location where compensation measures will be deployed, why the location is appropriate ecologically and likely to support successful compensation, and details of agreements demonstrating how the land and/or rights will or have been secured to deliver the ecology objectives of the KIMP;*
- (b) details of designs of the artificial nest site including the type of nesting structure; and how risks from avian or mammalian predation and unauthorised human access will be mitigated;*
- (c) an implementation timetable for delivery of the artificial nest structure that ensures relevant compensation measures are in place to allow four full kittiwake breeding seasons prior to the operation of any wind turbine generator forming part of the authorised development;*
- (d) details of the proposed ongoing monitoring of the measures including: survey methods; survey programmes; success criteria; recording of KCSG consultations and project reviews; adaptive management measures and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;*
- (e) details of the artificial nesting site maintenance schedule; and*
- (f) provision for annual reporting to the Secretary of State, to include details of the number of birds colonising the site including: evidence of birds prospecting; nesting attempts; egg laying; hatching; and fledging, to identify barriers to breeding success and target alternative or adaptive management measures."*

## **Representations**

8. On 12 April 2024, the Secretary of State invited comments from East Suffolk Council, Great Yarmouth Borough Council, Natural England, the MMO, the Royal Society for the Protection of Birds, Norfolk Boreas Limited and Norfolk Vanguard Limited, in accordance with paragraph 3 of Part 1 of Schedule 18 to the Orders. The deadline for a response was 11.59pm on 12 May 2024.
9. East Suffolk Council responded on 9 May 2024 and stated that the Kittiwake Steering Group Agreement Log was an accurate reflection of their position on all matters in which it wished to engage on and it showed East Suffolk Council had no objections.
10. Natural England responded on 7 May 2024 and stated that they welcomed the proposal for a new bird structure at the Port of Lowestoft and that the new bird structure holding a similar number of nest spaces as those already installed (each structure holds 144 nest spaces) would address the compensatory requirements of EA1N/EA2.

## **The Secretary of State's consideration of the Applicants KIMP Approval Request and the Representations**

11. The Secretary of State has considered the KIMP and Kittiwake Steering Group Agreement Log provided by the Applicant in respect of the requirements related to Paragraph 3 of Part 1 of Schedule 18 to the Orders and the representations received.
12. Paragraph 3 of Part 1 of Schedule 18 to the Orders states that the KIMP must be based on the strategy for compensation set out in the kittiwake compensation plan. This kittiwake compensation plan was contained in Appendix 1 to the Offshore Ornithology Without Prejudice Compensation Measures Revision 5 dated 31 January 2022 ("the Without Prejudice Compensation Plan") which states the predicted kittiwake loss due to collision is a mean of 0.7 adults for EA1N and 0.8 for EA2 per year (1.5 in total) and the proposed compensation target is 100 breeding pairs.
13. The Applicant previously proposed 15 nest spaces in the KIMP, however on 13 November 2023 the Secretary of State confirmed 100 breeding pairs is the required compensation because the Orders require the KIMP to be based on the Without Prejudice Compensation Plan which has a proposed target of 100 breeding pairs, and this is supported by calculations for the 100 figure as a threshold for compensation. Due to the shortfall of nest spaces the Secretary of State refused the KIMP request.
14. The KIMP Approval Request submitted on 14 March 2024 by the Applicant proposes 120 nest spaces as the Applicant seeks to address the compensation requirement of supporting 100 breeding pairs confirmed by DESNZ on 13 November 2023. The Applicant proposes 60 nest spaces for EA2, through the spaces provided in the existing three bird nesting structures at the Port of Lowestoft. The Applicant also proposes 60 nest spaces for EA1N of which 12 nest spaces are

to be provided from the existing three bird nesting structures and 48 from a proposed fourth bird nesting structure at the Port of Lowestoft. The Secretary of State considers that 120 nesting spaces in the revised proposed KIMP is based on the strategy for kittiwake compensation set out in the Kittiwake Compensation Plan.

15. A planning application covering the 48 nest spaces for EA1N from a proposed fourth bird nesting structure at the Port of Lowestoft was granted by East Suffolk Council on 31 May 2024 (DC/24/1195/FUL). The Applicant's KIMP for EA1N states the structure would be built between October 2024 and February 2025, and that an agreement with the landowner will be sought for the addition of the structure. The landowner agreement will need to be granted in order for the 48 nest spaces to be built in time for the required 4 breeding seasons in accordance with the requirements under Part 1 of Schedule 18 to the Orders. Therefore the Secretary of State requests the Applicant to provide notification (via [energyinfrastructureplanning@energysecurity.gov.uk](mailto:energyinfrastructureplanning@energysecurity.gov.uk)) when the fourth bird nesting structure is completed.
16. The Secretary of State agrees with the Applicant on all other matters relating to the requirements under paragraphs 3 of Part 1 of Schedule 18 to the Orders.
17. The Secretary of State is satisfied that the KIMP Approval Request and the enclosed KIMP and Kittiwake Steering Group Agreement Log provides the necessary information and complies with the requirements of paragraphs 3 of Part 1 of Schedule 18 to the Orders.
18. The Secretary of State approves the KIMP Approval Request in accordance with requirements under paragraphs 3 of Part 1 of Schedule 18 to the Orders.

Yours sincerely,



John Wheadon

Head of Energy Infrastructure Planning Delivery