



Department for
Business, Energy
& Industrial Strategy

Department for Business,
Energy & Industrial Strategy

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Dear Mr Livesey

PLANNING ACT 2008

APPLICATION FOR THE HORNSEA THREE OFFSHORE WIND FARM ORDER

1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 2 July 2019 of the Examining Authority (“the ExA”), comprising a panel of four examining Inspectors, David Prentis (Lead Member), Roger Catchpole, David Cliff and Guy Rigby, who conducted an examination into the application (“the Application”) submitted on 14 May 2018 by Orsted Hornsea Project Three (UK) Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Hornsea Three Offshore Wind Farm and associated offshore and onshore development (“the Development”).

1.2 The Application was accepted for examination on 8 June 2018. The examination began on 2 October 2018 and was completed on 2 April 2019. The Secretary of State received the report containing the ExA’s conclusions and recommendation on 2 July 2019.

1.3 The Secretary of State requested comments from the Ministry of Defence on 10 July 2019 in respect of Crown land and from Interested Parties on 27 September 2019 in respect of the North Norfolk Sandbanks and Saturn Reef Special Area of Conservation (“SAC”), The Wash and North Norfolk Coast SAC, Ornithology, Marine Conservation Zones (“MCZs”), Southern North Sea Site of Community Importance

Site Integrity Plan and the Flamborough and Filey Coast Special Protection Area (“SPA”). The decision deadline was reset until 31 March 2020 to allow that further information to be provided. The Secretary of State responded to a request for clarification by the Applicant on 31 October 2019. The decision deadline was then further reset until 1 June 2020.

1.4 On 2 March 2020, the Secretary of State invited comments on the representations received in response to the previous consultation as he considered the information provided by the Applicant in response to those letters contained new environmental information. In order to fully consider the responses to the new environmental information and the responses to the 2 March 2020 consultation, the decision date was reset until 1 July 2020.

1.5 On 1 July 2020, the Secretary of State issued a letter (“the “minded to” letter”) in which he stated that he could not rule out an Adverse Effect on Integrity (“AEoI”) on the kittiwake feature of the Flamborough and Filey Coast SPA in-combination with other plans or projects. Nor did he consider that necessary compensatory measures for that impact had been secured. The Secretary of State was therefore not able to grant consent to the Development at that time. However, having considered the further evidence provided by the Applicant and responses to that evidence from other Interested Parties, he considered that there was, on balance, a reasonable prospect of the Applicant being able to secure appropriate compensatory measures. He was therefore minded to grant consent subject to the Applicant providing sufficient evidence that the said compensatory measures had been secured. He noted that the draft Habitats Regulations Assessment (“HRA”) published alongside the “minded to” letter concluded the Development would not have an adverse effect on integrity on the relevant qualifying features of the North Norfolk Sandbanks and Saturn Reef SAC and the Wash and North Norfolk Coast SAC. He also requested comments on an amendment he was proposing to make to Requirement 18 of the Order in respect of construction traffic mitigation in Cawston village. The Applicant was asked to provide further information confirming that sufficient compensatory measures had been secured by no later than 30 September 2020.

1.6 In order to give other Interested Parties an opportunity to comment on the proposed compensatory measures and for the Secretary of State to make a final decision on the Application, the statutory date for the decision was reset to 31 December 2020.

1.7 The Order would grant development consent for the construction and operation of an offshore wind farm above 100 Megawatts (“MW”) and up to 2.4 Gigawatts (“GW”) with associated offshore and onshore development in the North Sea and the County of Norfolk.

1.8 The Development as applied for would comprise: up to 300 wind turbines with an electrical capacity above 100MW and up to 2.4GW; up to three offshore accommodation platforms; up to twelve offshore transformer substations; up to four offshore High Voltage Direct Current (“HVDC”) converter substations; up to six subsea offshore High Voltage Alternating Current (“HVAC”) booster stations; up to four surface offshore HVAC booster stations; subsea inter-array electrical circuits; a marine connection to shore; a foreshore connection; an onshore connection to an onshore substation; and the connection from there to National Grid’s existing Norwich Main substation. Subsequent to examination and in response to a request for information by the Secretary of State, the Applicant has submitted post-examination design envelope modifications including a reduction in the number of turbines from a maximum of 300 to a maximum of 231. This and other relevant modifications to the design envelope proposed in the post-examination modifications would be secured through the Order and were taken into account in the HRA. The Secretary of State does not consider that the proposed modifications amount to a material change to the Development as applied for.

1.9 The proposed Development may use HVAC or HVDC transmission or could use a combination of both technologies in separate electrical systems. It could also include an onshore HVAC booster station.

1.10 Powers of compulsory acquisition for both land, and new and existing rights over land, are also sought by the Applicant to support the delivery of the project.

1.11 A copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”) was published alongside the “minded to” letter. The main features of the Development proposals, as applied for, and site are set out in section 2 of the ExA’s report. The ExA’s findings are set out in sections 3 to 17 of the ExA’s Report, and the ExA’s conclusions on the case for development consent, the request for compulsory acquisition powers and the terms of the Order are set out (respectively) at sections 18, 19 and 20.

1.12 The Secretary of State’s position on many of the issues covered by the “minded to” letter remains the same. However, for the sake of clarity, his conclusions on those issues are restated in this letter. For the avoidance of any doubt, this letter contains the Secretary of State’s final conclusions and decision on the Application and, unless otherwise stated, this letter supersedes the “minded to” letter.

2. Summary of the ExA’s Report and Recommendation

2.1 The ExA’s recommendation in section 21.2 (pages 348-349) is as follows:

“21.2.1. For all the above reasons and in the light of our findings and conclusions on important and relevant matters set out in this report, the Examining Authority (ExA) recommends that the Secretary of State for Business, Energy and Industrial Strategy (SoS) should not make an Order granting development consent for the Proposed Development.”

21.2.2. *However, if the SoS is minded to make the Hornsea Three Offshore Wind Farm Order, the ExA recommends that it be made in the form of the draft attached at Appendix E.*

21.2.3. *Should the SoS wish to consider the case for alternative solutions, imperative reasons of overriding public importance and compensatory measures for European sites then the ExA recommends that it would first be necessary to seek further information from the Applicant and the relevant statutory nature conservation bodies.*

21.2.4. *If the SoS is minded to make the Hornsea Three Offshore Wind Farm Order, the ExA recommends that:*

- *further information is sought in relation to the Cromer Shoal Chalk Beds Marine Conservation Zone and the requirements of section 126(7) of the Marine and Coastal Access Act 2009;*
- *in the event that Markham's Triangle is designated¹ as a Marine Conservation Zone before the application is determined, there would need to be a further assessment for that site in accordance with section 126(7) of the Marine and Coastal Access Act 2009; and*
- *the Applicant be invited to submit an In Principle Southern North Sea Special Area for Conservation Site Integrity Plan.*

21.2.5 *If the SoS is minded to make the Hornsea Three Offshore Wind Farm Order, the ExA recommends that the SoS can be satisfied that there is a compelling case in the public interest for the compulsory acquisition and other powers sought in respect of the land shown on the Land plans. In respect of compulsory acquisition, the proposal would comply with section 122(3) of PA2008.*

21.2.6. *The SoS may wish to seek evidence that the Secretary of State for Defence has granted the consent required under section 135(1) of PA2008 in respect of plots 1-005 to 1-014, 1-017, 1-018, 30-029 and 30-030². Alternatively, the ExA recommends that the relevant plots would have to be excluded from the compulsory acquisition powers in Articles 18 and 20."*

3. Secretary of State's Consideration of the Application

3.1 The Secretary of State has considered the ExA Report and all other material considerations, including further representations received after the close of the ExA's examination ("the post-examination representations"). The Secretary of State's consideration of the ExA's Report and the post-examination representations is set out

¹ Markham's Triangle was designated as a Marine Conservation Zone on 31 May 2019

² Consent granted on 25 July 2019

in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*"].

4. The Need for the Development and Compliance with National Policy Statements and Marine Policy

4.1 The Secretary of State agrees with the ExA that substantial weight should be attached to the contribution the Development would make towards meeting the national need demonstrated by the Overarching National Policy Statement for Energy (EN-1) [ER 18.1.1 - ER 18.1.4] and the substantial contribution it would make towards the delivery of renewable energy.

4.2 The Secretary of State disagrees with the ExA's conclusion that the Development would have no adverse effect on the integrity of the Flamborough and Filey Coast SPA from displacement mortality in respect of Kittiwakes in combination with other plans or projects. But having considered all the environmental information including the post-examination representations and the further evidence in respect of offshore ecology and ornithology, including potential compensatory measures, provided by the Applicant, the Secretary of State is able to conclude that that the Development would accord with EN-1 and the National Policy Statement for Renewable Energy Infrastructure (EN-3), insofar as they relate to ornithology, offshore ecology and the benthic habitats issues, subject to conditions securing the necessary compensatory measures being included in the Order. This is further discussed in Section 6 below.

4.4 The Secretary of State agrees with the ExA that the Development would accord with EN-1, EN-3 and the National Policy Statement for Electricity Networks (EN-5) in all other respects. The Secretary of State notes that in looking at the relevant National Policy Statements ("NPSs") in the round, the ExA concluded that the Development would accord with them when they are considered as a whole [ER18.5.1 and ER 21.1.1].

4.5 The Secretary of State agrees that the contribution to renewable energy would support the objectives of the Marine Policy Statement ("MPS") and the East Inshore and East Offshore Marine Plans ("EIEOMP"). Having considered the post-examination representations, he is able to conclude that the Application would also accord with the MPS and EIEOMP insofar as they relate to offshore ecology and the benthic habitats issues (see Section 6 below). The Secretary of State notes that in also looking at the MPS and EIEOMP in the round, the ExA concluded that the Development accords with them when considered as a whole [ER 18.5.2 and ER 21.1.1].

4.6 The Energy White Paper, *Powering our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application.

5. Compliance with local policies

5.1 The Secretary of State has had regard to the Local Impact Reports (“LIRs”) and is satisfied that the matters arising from the LIRs and the relevant Development Plan policies referred to in the LIRs from Norfolk County Council, North Norfolk District Council, Broadland District Council and South Norfolk Council have been taken into account. Any potential conflict with a Development Plan policy has been considered in the relevant chapter in the ExA’s Report [ER 3.11.1 -ER 3.11.5 and ER21.1.1] and, where appropriate, referred to in the relevant paragraphs below.

Biodiversity and Habitats

Offshore Ecology and Requirements of the Marine and Coastal Assess Act 2009 and the Habitats Regulations

6.1 The ExA’s consideration of offshore ecology including MCZs, onshore ecology and the HRA are set out respectively in Chapters 6, 14 and 17 of the ExA’s Report. The Secretary of State agrees with the conclusions of the ExA except to the extent set out below.

The Habitats Regulations and the Planning Act 2008 process

6.2 The Secretary of State notes that during the course of the examination the ExA asked the Applicant and Natural England to comment on compensatory measures for the Flamborough and Filey Coast SPA, the North Norfolk Sandbanks and Saturn Reef SAC and The Wash and North Norfolk Coast SAC. The Applicant’s response was that there would be no AEoI on these sites and that, consequently, it was not necessary to identify compensatory measures. Until such time as the nature and extent of any adverse effect had been articulated, the Applicant did not feel it could address compensatory measures. The Applicant considered that if the Secretary of State were to conclude that compensatory measures were required, there would be a legitimate expectation that it would have an opportunity to make submissions on the matter and to enter into discussions with Natural England and the Secretary of State before a decision was made.

6.3 The Secretary of State is clear that the development consent process for nationally significant infrastructure projects is not designed for consultation on complex issues, such as HRA, to take place after the conclusion of the examination. On occasion, as a pragmatic response to particular circumstances, he may undertake such consultation, but no reliance should be placed on the fact that he will always do so. In this instance, he has, on balance, accepted that the situation in respect of potential significant adverse effects on the sites referred to in para 6.2 was novel and

so has exercised his discretion, and allowed the Applicant to make further representations on the matter of possible compensatory measures for those sites. However, he wishes to make it clear that, in order to maintain the efficient functioning of the development consenting regime, he may not always request post-examination representations on such matters, indeed it should be assumed that he will not do so, and he may therefore make decisions on such evidence as is in front of him following his receipt of the ExA's report. It is therefore important that potential adverse impacts on the integrity of designated sites are identified during the pre-application period and full consideration is given to the need for derogation of the Habitats Regulations during the examination. He expects Applicants and statutory nature conservation bodies ("SNCBs") to engage constructively during the pre-application period and provide all necessary evidence on these matters, including possible compensatory measures, for consideration during the examination.

6.4 This does not mean that it is necessary for Applicants to agree with SNCBs if SNCBs consider that there would be significant adverse impacts on designated sites. The final decision on such matters remains for the Secretary of State (though the Secretary of State reserves the right not to request further evidence from Applicants following the examination). Applicants should be assured that where they disagree with SNCBs and maintain a position that there are no significant adverse impacts, but provide evidence of possible compensatory measures for consideration at the examination on a "without prejudice" basis, both the ExA in the examination and the Secretary of State in the decision period will give full and proper consideration to the question of whether there are or are not significant adverse impacts. It will not be assumed that the provision of information regarding possible compensatory measures signifies agreement as to the existence of significant adverse impacts. The ExA will be required to provide an opinion on the sufficiency of the proposed compensation even if it considers that compensation is not required (in case the Secretary of State disagrees with that conclusion), but such measures would only be required if the Secretary of State were to find that there would be significant adverse impacts (and that the proposed compensatory measures are appropriate).

Habitats Regulations Overview

6.5 Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") and Council Directive 2009/147/EC on the conservation of wild birds ("the Birds Directive") aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects.

6.6 The Habitats Directive provides for the designation of sites for the protection of habitats and species of European importance. These sites are called Special Areas of Conservation ("SACs"). The Birds Directive provides for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the EU. These sites are called Special Protection Areas ("SPAs"). SACs

and SPAs are collectively termed European sites and form part of a network of protected sites across Europe. This network is called Natura 2000.

6.7 The Habitats Directive indicate that the assessment of plans or projects should comprise five sequential stages:

- Screening [ER 17.2.12 – ER 17.2.13];
- Appropriate Assessment [ER 17.2.14 – ER 17.2.15];
- Integrity Test [ER 17.2.16 – ER 17.2.18];
- Alternative Solutions [ER 17.2.19 ER 17.2.20]; and
- Imperative Reasons of Overriding Public Interest [ER 17.2.21 – ER 17.2.23].

6.8 In the UK, the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 transposed the Habitats and Birds Directives into national law as far as the 12 nautical mile limit of territorial waters. Beyond territorial waters, the Conservation of Offshore Marine Habitats and Species Regulations 2017 serve the same function for the UK's offshore marine area. Following the UK's departure from the European Union, these domestic regulations continue to apply. The Secretary of State notes the Application covers areas within and outside the 12 nautical mile limit, so both sets of Regulations apply.

6.9 Regulation 63 of the Conservation of Habitats and Species Regulations 2017 provides that:

“...before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.”

And that: *“In the light of the conclusions of the assessment, and subject to regulation 64 [IROPI], the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).”*

6.10 Regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 contains similar provisions:

“Before deciding to undertake, or give any consent, permission or other authorisation for, a relevant plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the site in view of that site's conservation objectives.”

And that: “*In the light of the conclusions of the assessment, and subject to regulation 29 [IROPI], the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).*”

6.11 The Habitats Regulations require that, where the project is likely to have a Likely Significant Effect on any such site, alone or in-combination with other plans and projects, an Appropriate Assessment is carried out to determine whether or not the project will have an adverse effect on the integrity of the site in view of that site’s Conservation Objectives.

6.12 Where an adverse effect on the integrity of the site cannot be ruled out, the Habitats Directive provides a derogation under article 6(4) which allows such plans or projects to be approved provided three tests are met:

- There are no feasible alternative solutions to the plan or project which are less damaging;
- There are “imperative reasons of overriding public interest” for the plan or project to proceed; and
- Compensatory measures are secured to ensure that the overall coherence of the network of European sites is maintained.

6.13 The above tests, which are also set out in both the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017, must be interpreted strictly and developments which may result in an adverse effect on the integrity of a Natura 2000 Site can only be authorised once the above tests have been met.

6.14 The complete process of assessment is commonly referred to as an HRA. While noting that it is for the Secretary of State to carry out the HRA, the ExA concluded that it could not rule out an adverse effect on integrity beyond reasonable scientific doubt in relation to the Annex I feature “*sandbanks slightly covered by water at all times*” in the following sites:

- North Norfolk Sandbanks and Saturn Reef SAC; and
- The Wash and North Norfolk Coast SAC. [17.9.3]

6.15 However, the ExA could not recommend any compensatory measures for the Secretary of State to consider because it did not have any evidence in front of it in respect of any such measures. It therefore recommended that the Secretary of State should seek further information from the Applicant and the relevant SNCBs regarding

alternative solutions, imperative reasons of overriding public interest and compensatory measures.

6.16 The ExA also concluded that the Development would not result in an adverse effect on integrity in relation to the relevant qualifying features of any other Natura 2000 sites including the Flamborough and Filey Coast SPA.

6.17 The Secretary of State's draft HRA was published alongside the "minded to" letter. For the avoidance of doubt, that draft HRA has been superseded by the HRA which is published alongside this letter. The following paragraphs, which summarise the final HRA, should be read alongside the final HRA which is the full statement of the Secretary of State's consideration of these matters.

6.18 In undertaking the HRA, the Secretary of State has carefully considered all of the information presented before, during and after the examination, including the Report on the Implications for Natura 2000 Sites, the Environmental Statement, representations made by Interested Parties, the ExA's report and responses to the post-examination consultation. He considered that the Development had the potential to have a Likely Significant Effect on 14 Natura 2000 sites when considered alone and in-combination with other plans or projects:

- Berwickshire and North Northumberland Coast SAC
- Coquet Island SPA
- Farne Islands SPA
- Forth Islands SPA
- Flamborough and Filey Coast SPA
- Greater Wash SPA
- Humber Estuary SAC and Ramsar site
- Norfolk Valley Fens SAC
- North Norfolk Coast SAC
- North Norfolk Coast SPA/Ramsar site
- North Norfolk Sandbanks and Saturn Reef SAC
- River Wensum SAC
- The Southern North Sea SAC
- The Wash and North Norfolk Coast SAC

6.19 The Secretary of State assessed these sites using all of the information available to him, including the advice from the SNCBs, the recommendations of the ExA and the views of Interested Parties including the Applicant. Having considered all of the information available and the mitigation measures secured through the Order and deemed Marine Licences, the Secretary of State has concluded that the

Development will not have an adverse effect on integrity on the relevant qualifying features of the following sites:

- Berwickshire and North Northumberland Coast SAC
- Coquet Island SPA
- Farne Islands SPA
- Forth Islands SPA
- Greater Wash SPA
- Humber Estuary SAC and Ramsar site
- Norfolk Valley Fens SAC
- North Norfolk Coast SAC
- North Norfolk Coast SPA/Ramsar site
- River Wensum SAC
- The Southern North Sea SAC;

6.20 The Secretary of State concluded that the Development would have an adverse effect on the kittiwake qualifying feature of the Flamborough and Filey Coast SPA in-combination with other plans or projects.

6.21 Due to the potential for kittiwake collision mortality, the Secretary of State cannot rule out an adverse effect on integrity beyond reasonable scientific doubt in relation to the in-combination impacts on kittiwake, a qualifying feature of the Flamborough and Filey Coast SPA. Although the Development alone will not have an adverse effect, the contribution it could make to the total in combination impact is not insignificant. There is a high level of confidence, based on the science, that there would be a population level effect on kittiwake from this SPA.

6.22 In respect of the North Norfolk Sandbanks and Saturn Reef SAC and the Wash and North Norfolk Coast SAC, the Secretary of State considers that habitats which are subjected to cable protection, will experience the effects of habitat loss, habitat modification and changes in epifauna communities. As the cable protection will be in place for 35 years, this is considered a long-term effect. Furthermore, cable protection measures are likely to impede the restoration of the Annex 1 habitats for the duration that they are in place. These habitats are currently in an unfavourable condition, and delays to their restoration would be contrary to the Conservation Objectives for the SACs. The Secretary of State concludes that adverse impacts on Annex I feature 'sandbanks slightly covered by sea water all the time' from the Development alone and in combination with other projects and plans cannot be ruled out. He reaches this conclusion, which differs from his conclusion on these sites in the "minded to" letter, having carefully considered all relevant information including information he received subsequent to the "minded to" letter.

6.23 The Secretary of State therefore concludes that the Development does not meet the integrity test and that the further tests set out in the Habitats Regulations

must be applied. These include an assessment of alternatives, Imperative Reasons of Overriding Public Interest (“IROPI”) and environmental compensation.

Consideration of Further Tests under the Habitats Regulations

6.24 On the basis of his Appropriate Assessment, the Secretary of State cannot ascertain, beyond reasonable scientific doubt, the absence of an adverse effect from the Development, in combination with other projects, on the integrity of the Flamborough and Filey Coast SPA with respect to the kittiwake feature.

6.25 The Secretary of State has therefore reviewed the Development in the context of Regulations 64 and 68 of the Conservation of Habitats and Species Regulations 2017 to determine whether it can be consented.

6.26 Consent may only be given under Regulation 64 where no alternative solutions to the project are available which are less damaging to the affected European site and where Regulation 68 is satisfied.

6.27 Regulation 64 allows for the consenting of a project even though it would cause an AEoI of a Natura 2000 site if it is required for IROPI.

6.28 Regulation 68 requires the appropriate authority to secure any necessary compensatory measures to ensure that the overall coherence of Natura 2000 is protected.

6.29 In accordance with guidance on the application of HRA published by the Planning Inspectorate (Advice Note 10) and the Department for Environment, Food and Rural Affairs (“DEFRA”), the Secretary of State reviewed the Development following a sequential process, giving consideration to:

- alternative solutions to the Development that have been sought;
- whether there are IROPI for the Development to proceed; and
- compensation measures proposed by the Applicant for ensuring that the overall coherence of Natura 2000 is protected have been assessed.

Alternative Solutions

6.30 For the reasons set out in the HRA, the Secretary of State considers that the benefits from the Development to the UK society and / or to the Applicant could alternatively be provided by any project with the following objectives:

- To generate low carbon electricity from an offshore wind farm in support of the decarbonisation of the UK electricity supply;
- To export electricity to the UK National Grid to support UK commitments for offshore wind generation and security of supply;
- To optimise generation and export capacity within the constraints of available sites and onshore transmission infrastructure; and

- To deliver a significant volume of offshore wind in the 2020s.

6.31 In accordance with guidance published by DEFRA, the Secretary of State does not consider the development of alternative forms of energy generation to meet the objectives for the Development. Alternatives to the Development considered by the Secretary of State are consequently limited either to Do Nothing or to alternative wind farm projects.

6.32 Alternative types of wind farm projects considered are:

- Offshore wind farms not in UK Exclusive Economic Zone (“EEZ”);
- Offshore wind farms within UK EEZ, including:
 - Within the former Hornsea Zone;
 - At other locations available to the Applicant;
 - Within other Zones leased from The Crown Estate by other developers;
 - Within Zones to be leased by The Crown Estate under the Licensing Round 4.

6.33 Having identified the objectives of the Development and considered all alternative means of fulfilling these objectives, for the reasons set out in the HRA, the Secretary of State is satisfied that no alternative solutions are available.

Imperative Reasons of Overriding Public Interest (“IROPI”)

6.34 A development, having an AEol on a Natura 2000 site may proceed (subject to a positive conclusion on alternatives and provision of any necessary compensation) if the project must be carried out for IROPI. The Secretary of State has therefore considered whether the Development is required for IROPI.

6.35 The Secretary of State is satisfied that there are imperative reasons of overriding public interest for the Development to proceed subject to adequate compensatory measures being implemented.

6.36 In arriving at his conclusion, the Secretary of State has reviewed how the Development provides a public benefit which is essential and urgent despite the harm to the integrity of the kittiwake feature of the Flamborough and Filey Coast SPA and the feature ‘sandbanks slightly covered by sea water all the time, of the North Norfolk Sandbanks and Saturn Reef SAC and the Wash and North Norfolk Coast SAC that will result from the Development in combination with other operational, consented and planned developments.

6.37 The conclusion is predicated by the principal and essential benefit of the Development as a significant contribution to limiting the extent of climate change in accordance with the objectives of the Climate Change Act 2008. The consequences of not achieving those objectives would be severely deleterious to societies across the globe, including the UK, to human health, to social and economic interests and to the environment.

6.38 The need to address climate change is the principal tenet behind the Climate Change Act 2008, and subsequently published NPSs for energy (EN-1)³, renewable energy infrastructure (EN-3)⁴ and electricity networks (EN-5)⁵ provide a framework for delivering the UK's international commitments on climate change.

6.39 Measures set out in the NPSs have been given further impetus to reflect evolving understanding of the urgency of actions to combat climate change, including the legally binding commitment to reduce greenhouse gas emissions to net zero by 2050, made in July 2019.

6.40 The Government's strategy for decarbonisation to achieve this commitment relies on contributions from all sectors delivered through multiple individual projects implemented by the private sector. The Government has also set up schemes to facilitate the deployment of such projects and to provide the public with value for money, such as via the Contracts for Difference scheme.

6.41 The Government anticipates that decarbonisation will lead to a substantially increased demand for electricity as other power sources are at least partially phased out or transformed. Simultaneously the supply of electricity must decarbonise. This will require the establishment of a reliable and secure mix of low-carbon electricity sources, including large-scale development of offshore wind generation.

6.42 Offshore wind generation schemes can only be developed through the mechanism put in place by The Crown Estate for leasing areas of the seabed in a structured and timely way. Projects, like the Development, which make a significant contribution to meeting the target capacity in the timeframe required are therefore both necessary and urgent.

Compensatory Measures

6.43 In the Secretary of State's letter of 27 September 2019, the Applicant was invited to provide evidence as to any compensatory measures proposed to ensure that the overall coherence of the network of Natura 2000 sites is protected. For the Flamborough and Filey Coast SPA the measures were to be by way of compensation for the impact of the Development, in combination with other developments, on the kittiwake feature. For the Wash and North Norfolk Coast SAC and North Norfolk and Sandbanks and Saturn Reef SAC, compensation measures were required for the impacts of the Development alone and in combination with other projects on the Annex 1 qualifying feature 'sandbanks slightly covered by sea water all the time'.

³ Department of Energy & Climate Change. Overarching National Policy Statement for Energy (EN-1). TSO, 2011.

⁴ Department of Energy & Climate Change. National Policy Statement for Renewable Energy Infrastructure (EN-3). TSO, 2011.

⁵ Department of Energy & Climate Change. National Policy Statement for Electricity Networks Infrastructure (EN-5). TSO, 2011.

6.44 In response to this request, the Applicant submitted a Kittiwake Compensation Strategy which outlined how a Kittiwake Compensation Plan will be developed by the Applicant in cooperation with Natural England, the Royal Society for the Protection of Birds (“RSPB”) and other potentially Interested Parties. The Kittiwake Compensation Plan would require approval from the Secretary of State.

6.45 The Kittiwake Compensation Strategy proposed to enhance the productivity of an, as yet unspecified, colony of kittiwake through a programme of eradication of invasive mammalian predators. The Secretary of State reviewed the Applicant’s proposed strategy and also responses to the strategy submitted by the SNCBs and other Interested Parties. He noted that agreement in principle has not been reached with SNCBs on the feasibility of the method and there remain significant potential obstacles to its implementation.

6.46 By way of example, and notwithstanding other concerns, the Secretary of State concurred with the opinions provided by Natural England and the RSPB that, whereas it is reasonable to conclude that a successful method of eradication can be developed, it is questionable whether predator eradication would result in an increase in the breeding productivity of kittiwake.

6.47 Since kittiwakes usually nest on narrow ledges on tall, vertical or near-vertical cliffs that are not accessible to mammals, predation by land mammals is rare and there is little evidence to support the suggestion that this predation would impact the productivity of a kittiwake colony unless food resource is plentiful. This may present an underlying flaw in the proposed strategy, and robust evidence would need to be provided to demonstrate that kittiwakes will benefit.

6.48 The Applicant also submitted a Sandbank Compensation Strategy for the North Norfolk Sandbanks and Saturn Reef SAC and The Wash and North Norfolk Coast SAC. The Sandbank Compensation Strategy proposed the restoration of up to 44.57 ha of blue mussel bed, which is a Priority Habitat and a sub-feature of the shallow inlets and bays of The Wash and North Norfolk Coast SAC; lost/ abandoned fishing gear removal and measures to increase the recovery of lost fishing gear within the Eastern Inshore Fisheries and Conservation Agency district; and an awareness campaign and improved recovery measures for lost fishing gear.

6.49 The Applicant submitted that the final details of the delivery methodology and geographic scale of the compensatory measures would be provided in a pre-commencement Sandbanks Compensation Plan.

6.50 Having carefully considered the proposed compensatory measures, the Secretary of State concluded that the Applicant’s Kittiwake Compensation Strategy contained insufficient evidence to give the required level of confidence that the proposed approach could be successfully applied to compensate for the level of impact to the Flamborough and Filey Coast SPA.

Final kittiwake compensation

6.51 Following the release of the “minded-to letter” and draft HRA, the Applicant responded to the Secretary of State’s request by submitting a new Kittiwake Compensation Plan developed in consultation with Natural England, the RSPB and MMO. Measures to eradicate mammalian predators were withdrawn, and compensation would instead be delivered through the construction and maintenance of four artificial nesting structures at English east coast locations to increase the productivity of the eastern Atlantic kittiwake population.

6.52 The Applicant’s proposals outline methods for selecting locations for the artificial nest sites; a criterion for the design of the nesting structures; and a monitoring and adaptive management strategy. The final details of the compensation measures will be presented within a Kittiwake Implementation and Monitoring Plan that will be submitted to the Secretary of State prior to the commencement of the development.

6.53 An Offshore Ornithology Engagement Group (OOEG) will be formed which will advise on a Kittiwake Implementation and Monitoring Plan (KIMP). The KIMP will include the following:

- i. Details of the locations where compensation measures will be deployed and details of landowner agreements demonstrating how the land will be bought or leased, and assurances that the land management will deliver the ecology objectives of the KIMP.
- ii. Details of designs of artificial nest sites including the number of nesting structures; and how risks from avian or mammalian predation, and unauthorised human access will be mitigated.
- iii. An implementation timetable for the delivery of the artificial nest structures that ensures all compensation measures are in place in time to allow four full kittiwake breeding seasons prior to the operation of any turbine forming part of the authorised development.
- iv. Details of the proposed ongoing monitoring of the measures including: survey methods; survey programmes; success criteria; records of OOEG consultations and project reviews; details of the factors used to trigger alternative compensation measures and/ or adaptive management measures; and annual reporting to the Secretary of State.
- v. Details of any adaptive management measures, which would include the provision of additional nesting sites if capacity in one location is exceeded.
- vi. Annual reporting to the Secretary of State should include details of the use of each site by breeding kittiwake to identify barriers to success and target the adaptive management measures. This would include the number of birds colonising the site; evidence of birds prospecting; nesting attempts; egg laying; hatching; and fledging.

vii. Details of how natal dispersal and colony interchange with the Flamborough and Filey Coast SPA kittiwake colony will be considered, and proposals for assessing any evidence of additional productivity to that at the Flamborough and Filey Coast SPA colony.

viii. Details of the artificial nesting site maintenance schedule.

ix. Details of the work within the Applicant's proposals for 'Exploration of Prey Availability Measures' which could support practical management measures to increase prey availability, and which should be undertaken alongside the artificial nest site installation.

Final sandbanks compensation plan

6.54 With regards to North Norfolk Sandbanks and Saturn Reef SAC and The Wash and North Norfolk Coast SAC, the Secretary of State notes the compensatory measures proposed by the Applicant, and recommends that because adverse effects will occur within both SACs, compensation is required at both SACs. This includes the removal of lost/abandoned fishing gear from sandbank habitats within both SACs prior to the start of the construction works. Areas covered by the fishing gear removal program are to be at least 41.80 ha at North Norfolk Sandbanks and Saturn Reef SAC and 2.77 ha at North Norfolk Coast SAC.

6.55 As the impacts of the Project are to sandbank habitats, the Secretary of State does not consider it necessary to create mussel beds as compensation; however, the removal of lost/ abandoned fishing gear from both SACs would improve the condition of the sandbank habitats for endemic epifauna communities.

6.56 As with the kittiwake compensation strategy, the Applicant should establish a Steering Group to shape and inform the scope and delivery of the compensation package. The Steering Group should be consulted on the final Sandbanks Compensation Plan and monitoring plans prior to submission to the Secretary of State and during the approval process. The Applicant should consult with and report to the Steering Group at least annually in the establishment and implementation phases of the Development and document the conclusions of the meetings.

6.57 The sandbanks compensation plan will also include details of lost fishing gear awareness events and measures to facilitate the rapid recovery of lost fishing gear. Such measures will apply to both SACs.

Derogation conclusion

6.58 The Secretary of State concludes that the Development in combination with other developments, would give rise to impacts to the kittiwake feature of the Flamborough and Filey Coast SPA which would adversely impact the integrity of that site for kittiwake. He also concludes in respect of the North Norfolk Sandbanks and Saturn Reef SAC and the Wash and North Norfolk Coast SAC that adverse impacts

on Annex I feature 'sandbanks slightly covered by water all the time' from the Development alone and in combination with other projects and plans cannot be ruled out.

6.59 The Secretary of State is satisfied that there are no alternatives to fulfilling the objectives of the Development and that the Development provides a benefit that is imperative to the public interest. The Secretary of State is also satisfied that the benefits of the project would over-ride the impacts to the Flamborough and Filey Coast SPA, the North Norfolk Sandbanks and Saturn Reef SAC and the Wash and North Norfolk Coast SAC if appropriate compensation is identified.

6.60 Given the updated compensation measures for kittiwake provided by the Applicant and the sandbank compensation measures outlined above, the Secretary of State is confident that adequate compensation is proposed and will be in place to offset any impacts to features of Natura 2000 sites from the Development.

6.61 These conclusions are supported by the HRA which accompanies this letter and which concludes that there are no alternatives to fulfilling the objectives of the Development and that the Development provides a benefit that is imperative to the public interest. The HRA also concludes that the public benefits of the Development would over-ride the impacts to the FFC SPA and the North Norfolk Sandbanks and Saturn Reef SAC and The Wash and North Norfolk Coast SAC, and that appropriate environmental compensation can be secured.

Marine and Coastal Assess Act 2009 ("MCAA")

6.62 Noting the conclusions of the ExA in respect of the Cromer Shoal Chalk Beds MCZ and Markham's Triangle MCZ that the effectiveness of rock protection decommissioning remains unproven and the recovery of sandwaves in areas of shallow sediment is uncertain, resulting in a small but permanent loss of habitat which would harm the qualifying features and hinder the conservation objectives of the two MCZs, the Secretary of State requested further evidence in respect of impacts from cable rock protection on the subtidal sand features of the two MCZs.

6.63 The Secretary of State has carefully considered all of the information presented before, during and subsequent to the examination. He has considered the representations made by Interested Parties, and the ExA's report itself. Full details of the Secretary of State's consideration is set out in the Hornsea Project Three Habitats Regulation Assessment and Marine Conservation Zone Assessment.

6.64 In summary, a stage 1 assessment on the Cromer Shoal Chalk Banks MCZ has, given the 'maintain' status of the site, ruled out beyond reasonable scientific doubt, significant risk of the activity hindering the achievement of the conservation objectives stated for the MCZ on the basis that although the potential impacts are long

term (for the duration of the project), they will have a temporary (reparable effect) and therefore not affect the conservation objectives of the site.

6.65 The Applicant has confirmed that there will be no infrastructure within the Markham's Triangle MCZ and consequently no impacts that could affect the conservation objectives of that site.

Onshore Ecology

6.66 The Secretary of State agrees with the ExA that there is no significant conflict with EN-1, the National Planning Policy Framework or North Norfolk Local Development Framework Core Strategy 2008 in respect of onshore ecology. The Secretary of State is satisfied that whilst there would be impacts on some species and a reduction of some habitats, such impacts would be minimised through measures identified in the Environmental Statement. Residual impacts would be mitigated through the Code of Construction Practice ("CoCP") and Ecological Management Plan ("EMP"), both of which could be secured by the ExA's recommended Order. The Secretary of State agrees that onshore ecology is not a matter which weighs significantly against the Order being made [ER 14.5.6, ER 18.2.30 -ER 18.2.32].

7. Alternatives⁶ and Design Flexibility

7.1 The Secretary of State notes there were a number of concerns raised during the examination relating to the proposed onshore infrastructure, the consideration of alternatives and the design flexibility sought in the Order by the Applicant. These concerns included: the intention to connect to the grid at Norwich Main substation rather than at Necton, where it is proposed that another Nationally Significant Infrastructure Project ("NSIP"), Norfolk Vanguard offshore wind farm ("Norfolk Vanguard"), would be connected [ER 5.4.1- ER 5.4.3]; the flexibility sought in applying for both HVAC and HVDC transmission systems and the perceived benefits and disbenefits and impacts of those transmission options; the potential construction phasing and use of ducting [ER 5.6.1 -ER 5.6.13]; the impacts of the proposed landfall works and use of both horizontal directional drilling and open cut techniques [ER 5.7.1 – ER 5.7.6]; and the Applicant's Option B choice of location for the HVDC Converter/HVAC substation [ER 5.8.1 – ER 5.8.4].

7.2 The Secretary of State agrees that there has been an iterative design process which has sought to avoid significant harm to biodiversity and geological conservation interests, including through consideration of reasonable alternatives. The Secretary of State is satisfied that the Applicant has carried out a reasonable site selection process and provided information about the choices made [ER 18.1.5] and agrees that the design flexibility approach sought in respect of the transmission system and

⁶ The assessments of alternatives required under the Reg 64 of the Habitats Regulations and S126(7) of the MCAA are dealt with in section 7.

phasing is justified [ER 18.1.6]. The Secretary of State is content that the maximum extent of the Development has been set out and its impacts assessed on that basis and that the Applicant's approach to alternatives and design flexibility is in accordance with National Policy Statements EN-1 and EN-3 [ER 18.1.7]. The Secretary of State agrees that this is not a factor which weighs against the Order being made [ER 5.10.7].

7.3 The Secretary of State's consideration of the "offshore ring main" option is set out in paras 18.23 and 18.24 of the section headed "Representations received after the end of the consultation period" below.

8. Land and Recreational Use

Farming Operations and Agricultural Land

8.1 The Secretary of State recognises that the onshore construction and permanent works would inevitably result in disturbance to farming operations and notes the concerns raised in the representations but is satisfied that the mitigation measures incorporated in the Outline CoCP would mitigate the operational impacts on farm holdings. The Secretary of State accepts that, whilst there would be a moderate adverse effect on the best and most versatile agricultural land during construction and operation, the Applicant has reasonably minimised the impacts on such land. The Secretary of State also acknowledges that three large farm holdings would be affected by the permanent above ground works required for the HVDC booster station (if required) and the HVDC converter/HVAC substation, but is satisfied that the proportion of land taken from each holding is unlikely to significantly affect their long term operation [ER 9.4 and ER 18.2.10].

Other Land and Recreational Use Issues

8.2 The Secretary of State notes that other land and recreation use concerns were also raised in relation to the need to minimise disruption for: users of Public Rights of Way [ER 9.4.20 – ER 9.4.25]; game shooting [ER 9.4.26 – ER 9.4.27]; and recreational beach users at Weybourne [ER 9.4.27] and the implications of the cable corridor route upon future housing development sites [ER 9.4.28 – ER 9.4.31].

8.3 The Secretary of State agrees that suitable measures would be secured in the Outline CoCP to safeguard users of Public Rights of Way and other access routes, including the Norfolk Coast Path [ER 9.5.4]. The Secretary of State also agrees that no issues would arise that would result in any significant adverse land use and recreational impacts and that any potential residential development sites are either located outside the corridor route or are not sufficiently advanced [ER 9.5.5].

8.4 Overall, the Secretary of State is satisfied that necessary mitigation measures could be secured through the ExA's recommended Order and that land use and recreation impacts would accord with EN-1 and do not weigh significantly against the Order being made [ER 9.5.6 and ER 18.2.11].

9. Transport and Highway Safety

9.1 The Secretary of State is mindful that several representations were made regarding the potential impact of construction traffic at several locations in connection with the onshore infrastructure works. The Secretary of State notes that the transport and traffic impacts of the Development were considered by the Applicant in consultation with key organisations including Norfolk County Council and Highways England. The ExA was satisfied that the baseline, methodology and assessments provided by the Applicant in the Environmental Statement, as supplemented during the examination, were generally sound [ER 10.5.1]. The ExA also recognised the progress made on the development of construction traffic and mitigation measures, which are included in the Outline Construction Traffic Management Plan (“CTMP”) [ER 10.4.9]. The final CTMP(s) would need to be submitted for approval to the relevant planning authority prior to the commencement of the construction phase, when further details of the procurement of materials and more clarity on traffic movements would be known [ER 10.5.2]. The Secretary of State agrees that significant weight should be given to the positions of Norfolk County Council and Highways England, both of who are generally in agreement on the approach taken by the Applicant in assessing construction traffic impacts and the proposed mitigation measures [ER 10.5.3.].

9.2 The Secretary of State acknowledges the outstanding concerns remaining from residents and Parish Councils regarding construction traffic in specific locations, including impacts arising from the main construction compound at Oulton airfield [ER 10.4.12 – ER 10.4.21] and use of the B1145 through the village of Cawston, including cumulative impacts with Norfolk Vanguard [ER 10.4.22 – ER 10.4.35]. It is noted that the Outline CTMP also includes a commitment for the Development and Norfolk Vanguard to actively engage and manage cumulative traffic impacts to ensure the peak traffic periods for each scheme do not overlap [ER 10.4.33]. The Secretary of State notes the ExA considered the maximum number of Heavy Goods Vehicle (“HGV”) movements in the above locations would be substantial and that there was potential for some localised highways impacts [ER10.5.4] and whilst the ExA considered the mitigation measures proposed at the above locations would minimise the impacts, further refinement of the Cawston Highway Intervention Scheme was proposed in liaison with the relevant interested parties. The Secretary of State is content that final highway intervention schemes and other traffic mitigation measures would be secured in the final CTMPs by Requirement 18 in the ExA’s recommended Order [ER 10.5.5] but, in the light of his decision on the Norfolk Vanguard project and further representations made by the Applicant, Norfolk County Council and Cawston Parish Council, he has decided to make an amendment to Requirement 18 in the Order to specifically reference the Cawston Highway Intervention Scheme which takes into account the potential cumulative impact of the construction traffic (See section 18 below).

9.3 Overall, whilst appreciating there will be some temporary adverse highways impacts during construction that will inevitably cause some disruption and

inconvenience for highway users, particularly in-combination with Norfolk Vanguard in certain locations, the Secretary of State is satisfied that these are likely to be limited. The Secretary of State agrees that reasonable mitigation measures can be secured through the Order (as amended) to reduce impacts to acceptable levels [ER 10.5.6] and traffic and transport impacts accord with NPS EN-1 and do not weigh significantly against the Order being made [ER 10.5.7].

10. Impact on Living Conditions of Local Residents

10.1 The Secretary of State notes that a number of other concerns were raised relating to construction or the operation of the Development and its impact on living conditions of local residents. These included: the construction impacts of the HVDC converter/HVAC substation near Swadeston [ER 11.4.6 and ER 11.4.33 - ER 11.4.34]; the proposed construction hours for the substation and noise; [ER 11.4.9]; the main construction compound at Oulton airfield, including noise and vibration from traffic movements, including on the occupiers of The Old Railway Gatehouse on the main access route to and from Oulton airfield [ER 11.4.1 and ER 11.4.13] and noise and light pollution from the compound itself; the cumulative impacts with Norfolk Vanguard [ER 11.4.2 and ER 11.4.13]; the impact on the residential properties on the B1145 through Cawston village [ER 11.4.2 and ER 11.4.23 – ER 11.4.30]; operational noise effects from the HVAC booster station [ER 11.4.1 and ER 11.4.31 - ER 11.4.32 and ER 11.3.34]; impact of construction traffic on air quality [ER 11.4.35 – ER 11.4.38]; the impact of Electro-Magnetic Fields (“EMFs”) on human health, including the potential cable corridor crossing point with Norfolk Vanguard [ER 11.4.39 – ER 11.4.43]; and the impact of the onshore construction works on Human Rights [ER 11.4.43].

10.2 In respect of concerns raised by interested parties, including Broadland District Council and Oulton Parish Council, in relation to the main construction compound at Oulton airfield, the Secretary of State notes that the Applicant submitted a Construction Traffic Noise and Vibration Assessment at the Old Railway Gatehouse. It also provided a Clarification Note, including matters relating to the movement of abnormal loads outside of core hours and World Health Organisation noise levels. It is also noted that these documents concluded that, with the proposed mitigation measures in place, the residual noise and vibration impacts would be of minor significance in EIA terms, including the cumulative construction scenario with Norfolk Vanguard, which would also use The Street for construction traffic movements [ER 11.4.18].

10.3 The Secretary of State notes that a subsequent Statement of Common Ground between the Applicant and Broadland District Council confirmed that the principle of mitigation measures in respect of Old Railway Gatehouse and also the operation of the main construction compound (contained in the Outline CTMP) were acceptable [ER 11.4.19]. However, this view was not shared by the Parish Council and the occupiers of the Old Railway Gatehouse. Whilst the ExA considered that there would inevitably be some adverse impacts on the residential living conditions at the Old

Railway Gatehouse during construction, which would be exacerbated should Norfolk Vanguard construction works overlap, it gave significant weight to the agreed position between the Applicant and Broadland District Council. The ExA considered the Applicant's proposed mitigation measures in the Outline Construction Code of Practice were reasonable to minimise the adverse impacts (including noise and light) from use of the main construction compound to an acceptable level [ER 11.4.21]. A previous planning application by Black Bridge Energy Ltd for an anaerobic digestion renewable energy facility at Oulton airfield was refused by Broadland District Council and also subsequently dismissed by the Planning Inspectorate on appeal due to impacts including traffic noise on the living conditions of occupiers of the Old Railway Gatehouse. However, the ExA considered the mitigation measures outlined above (including the regrading of the hump outside the property) would satisfactorily minimise noise impacts in this case [ER 11.4.22]. The Secretary of State agrees with this conclusion.

10.4 In respect of a number of representations from local residents regarding the impact on living conditions from construction traffic using the B1145 through Cawston village, the Secretary of State notes that the ExA acknowledged the substantial increase in HGV traffic and that potential impacts would be exacerbated should construction works overlap with Norfolk Vanguard [ER 11.4.29]. However, the ExA considered that the measures proposed by the Applicant in the Outline CTMP would reasonably mitigate and minimise the temporary construction impacts. In coming to this conclusion, the ExA also gave weight to the agreement on noise and vibration between the Applicant and Broadland District Council referred to in paragraph 11.3 above [ER 11.4.30]. The Secretary of State agrees with this conclusion but has also agreed to amend Requirement 18 in the Order so that it refers to the Cawston Highways Intervention Scheme (See section 18 below).

10.5 The Secretary of State is also content that the measures in the Outline CoCP would satisfactorily mitigate and minimise adverse impacts on health and quality of life from noise and other impacts during construction at the cable corridor sites, the HVDC converter/HVAC substation and HVAC booster station [ER 11 and ER 18.2.15].

10.6 In conclusion, the Secretary of State accepts that there would inevitably be some adverse impacts experienced by local residents from increased traffic movements during the temporary construction work periods. However, the mitigation measures the Applicant has developed in consultation with the local planning authorities are considered reasonable and proportionate to the issues raised and would satisfactorily reduce noise and disturbance for local residents to acceptable levels particularly in relation to Cawston and the main construction compound at Oulton airfield [ER 11.5.2]. The Secretary of State is satisfied that, with the mitigation measures secured in the Order (as amended), there would be no significant impact on local residents from the operation of the Development and no adverse health impacts from electric and magnetic fields, including at the potential cable crossing point with Norfolk Vanguard [ER 11.4.39 – ER 11.4.42 and 11.5.3]. Overall, the Secretary of

State agrees with the ExA's assessment that the Development accords with NPSs EN-1 and EN-5, and the Marine Policy Statement, and its conclusion that matters relating to the living conditions of local residents, including effects on human health, do not weigh significantly against the recommended Order being made [ER 11.5.4].

11. Landscape and Visual Impacts

11.1 The Secretary of State accepts there would be some limited visual and landscape impacts resulting from construction, including the removal of some existing hedgerows for the onshore export cables, but is satisfied such impacts would be temporary. It is noted that measures proposed by the Applicant to minimise the impacts, including avoidance of key landscape features, by using horizontal directional drilling ("HDD") and landscaping proposals, including hedgerow replacement planting, were considered by the ExA to satisfactorily reverse the adverse construction impacts within a reasonable timescale, such that there would be no long term landscape or visual impact [ER 12.5.1 and ER 18.2.19].

11.2 The Secretary of State notes the concerns raised by Natural England in relation to the part of the cable corridor that would be located within the North Norfolk Area of Outstanding Natural Beauty ("AONB") [ER12.4.32 – ER12.4.45]. However, the Secretary of State agrees with the ExA that its adverse construction impacts would be short term and minimised by the Applicant's mitigation measures, resulting in no longer term impacts upon the landscape and scenic beauty of the AONB. The Secretary of State is content that there is an exceptional case for development within the AONB [ER 12.5.2 and ER18.2.20].

11.3 Although the Secretary of State accepts there would be some adverse landscape and visual impacts from the permanent above ground infrastructure, detailed infrastructure design and landscaping schemes would be secured by Requirements in the ExA's recommended Order (as amended) and would require approval by the relevant local planning authority [ER 18.2.21].

11.4 The Secretary of State therefore agrees with the ExA's conclusion [ER 12.5.6] that matters relating to landscape and visual impacts do not weigh significantly against the Order being made.

12. Navigational Risk and other offshore operations

12.1 The Secretary of State agrees that, with the proposed mitigation in the ExA's recommended Order (including the Deemed Marine Licences and Protective Provisions), the Development would not pose unacceptable risks to navigational safety [ER 7.4 and ER 18.2.4].

12.2 The Secretary of State notes that a number of concerns were raised by Spirit Energy relating to the operation of a number of its assets to the east of the proposed wind farm array. Following receipt of the ExA report, the Applicant and Spirit Energy

entered into a Co-operation and Co-Existence Agreement on 28 May 2020. The parties have therefore confirmed that they are satisfied that their interests are protected and the protective provisions originally proposed to address the concerns of Spirit Energy would not be required.

12.3 Following the “minded to” letter, a representation from Kellas North Sea 2 Limited in respect of the Esmond Transmission System and its interaction with the Development was drawn to the Secretary of State’s attention. That matter is dealt with in section 18 below.

12.4 Overall, the Secretary of State is content that the Applicant’s approach to navigational safety and other offshore operations is in accordance with relevant policies and agrees that this was not a matter that weighed significantly against the Order being made [ER 18.2.6].

13. Commercial Fishing

13.1 The Secretary of State notes from Chapter 8 of the ExA’s Report that there would be some disruption to the fishing industry, in particular the UK potting fleet [ER 8.5.3] and also, on a cumulative basis, moderate adverse effects of a reduction in access and displacement for demersal trawlers during all stages of the Development [ER 8.5.4]. However, the Secretary of State is satisfied that appropriate mitigation measures would be secured through the ExA’s recommended Order and there is no conflict with the Marine Policy Statement, the EIEOMP and EN-3. The Secretary of State agrees that commercial fishing is not a matter which weighs significantly against the ExA’s recommended Order being made [ER 8.5.5 and ER 18.2.9].

14. Historic Environment

14.1 The Secretary of State notes concerns about the effects of the Development on the historic environment were raised during the examination by South Norfolk Council [ER 13.4.1], Broadland District Council [ER 13.4.2], Historic England [ER 13.4.5], Mulbarton Parish Council [ER 13.4.13], the National Trust [ER 13.4.14] and also by other Interested Parties in several other written and oral representations [ER 13.4.19]. These included a range of different historic environment issues, namely: the impact of the proposed HVDC converter/HVAC substation on the setting of the Grade II listed Keswick Hall and its historic parkland (and also on the rural landscape settings of the Grade II listed buildings at Mangreen Hall, Gowthorpe Manor and Intwood Hall) [ER 13.4.1 and ER 13.4.5 – ER13.4.13]; the impacts on Blickling Conservation Area and several listed buildings in Oulton village arising from traffic movements to the main construction compound at Oulton airfield [ER 13.4.2]; the impact of construction traffic on the Cawston Conservation Area and several listed buildings in Cawston village [ER 13.4.2 and ER 13.4.19 - ER13.4.22]; and the heritage impacts of the main construction compound on the undesignated Oulton airfield heritage asset, and including its link to the nearby Grade I listed Blickling Hall [ER 13.4.14-13.4.18].

14.2 The Secretary of State agrees with the ExA's conclusions that the proposed HVDC converter/HVAC substation would result in a moderate adverse impact upon the setting of the following designated heritage assets: Gowthorpe Manor; Mangreen Hall; Roman town of Venta Icenorium; and Church of St Edmund [ER 13.5.3 and ER 18.2.25] and that there would be minor adverse impacts upon the setting of other heritage assets in the vicinity of the proposed HVDC converter/HVAC substation, including Keswick Hall and its non-designated parkland, and several heritage assets located in the vicinity of the cable corridor. The Secretary of State is satisfied that the minor adverse impacts on both onshore and marine archaeology would be mitigated by written schemes of investigation secured in both the ExA's recommended Order and Deemed Marine Licences [ER 13.5.5 and 18.2.25].

14.3 The Secretary of State is satisfied there would be no harm to the significance of listed buildings in Cawston or to the appearance of the Cawston Conservation Area nor to the setting or significance of the Blickling Conservation Area and that Oulton airfield would be satisfactorily safeguarded [ER 13.5.6 and ER 18.2.26].

14.4 The Secretary of State acknowledges the desirability of preserving listed buildings or scheduled monuments or their setting under the Infrastructure Planning (Decisions) Regulations 2010. Therefore, the Secretary of State gives substantial importance and weight to the desirability of preserving the setting of the listed buildings and scheduled monuments. Taking account of the public benefits of the Development in terms of the delivery of renewable energy, the Secretary of State is satisfied that this outweighs, in each case, the harm identified in relation to designated heritage assets and the minor adverse effects on undesignated assets. [ER 18.2.28]. The Secretary of State also agrees that, taking account of the public benefits, there is a clear and convincing justification for the harm that would result, both individually and collectively, upon designated heritage assets and that overall, historic environment matters would accord with NPSs EN-1, EN-3, the UK Marine Policy Statement and EIEOMP and do not weigh significantly against the Order being made [ER 18.2.29].

15. Socio Economic Impacts

15.1 The Secretary of State notes concerns were raised by North Norfolk District Council and other interested parties during the examination, regarding the impacts of onshore construction works on tourism and recreation, including on individual businesses. These included concerns regarding construction traffic movement, beach closures and footpath closures on tourism, particularly at the northern end of the cable corridor near Weybourne and Kelling. It is also noted that evidence was provided by North Norfolk District Council, which considered it was hard to quantify the actual impacts of construction on visitor numbers. Whilst North Norfolk District Council recognised there would also be some positive effects, such as construction workers staying in local accommodation, it considered overall spend in the economy from tourist attractions and spin-off businesses could be reduced [ER 15.4.4, ER 15.4.6 and ER 15.4.9]. North Norfolk District Council subsequently confirmed that whilst the

long-term effects on tourism from the Development would be benign, it considered it would have a disproportionately high impact on local tourism businesses in the short term because of the North Norfolk's high level of dependence on tourism. Construction works at the landfall near Weybourne would be a maximum 2.5 years duration in potentially two phases. The cable corridor is expected to progress across each phase with a typically active construction works duration of 3 months in any particular location [ER 15.4.13].

15.2 The Secretary of State notes that the ExA acknowledged the potential for some disruption to tourism in the Weybourne and Kelling area [ER 15.4.11] and elsewhere with a number of other representations received, concerned about the impact of onshore construction on individual businesses [ER 15.4.19], but considers that such effects would be temporary and mitigation measures would be included in the Outline CoCP and Outline CTMP to reduce disruption. For example, the Applicant would engage with Norfolk County Council to agree HGV routing and timing on key tourism road links during the peak holiday period (June to September) under the Outline CTMP and the Outline CoCP contained noise and vibration containment measures. It would also provide for a Public Right of Way Management Plan to be approved in the event that the beach at Weybourne is restricted or the coastal path needs temporarily diverting [ER 15.4.14].

15.3 The Secretary of State notes that North Norfolk District Council and Norfolk County Council suggested that a Community Benefit Fund should be established by the Applicant and secured through the Order to identify how small businesses can be compensated to avoid closure and to compensate businesses and communities affected by construction works. The Applicant's response was that any Community Benefit Fund should be voluntary and not secured through the Order. Given there was no clear evidence of significant impact on tourism, the ExA agrees and has not given any weight to a voluntary fund, as there was no planning obligation or Order drafting before them [ER 15.4.17 – ER 15.4.19]. This matter is also considered further by the Secretary of State in section 18 below.

15.4 The Secretary of State agrees that the potential disturbance or disruption from construction works would result in some adverse effect on tourism, particularly near landfall where tourism activity is more concentrated. However, the Secretary of State is satisfied this would be short term and localised. The Applicant's proposed mitigation measures are reasonable and would be secured through the ExA's recommended Order. Whilst there may be significant positive benefits regarding the level of employment and gross value added benefits potentially arising from the Development, the Secretary of State agrees that there remains considerable uncertainty and that only moderate weight should be attached to such benefits [ER18.2.34].

15.5 Overall, the Secretary of State agrees that the adverse impacts on tourism and recreation would be likely to be minor and unlikely to result in significant harm and would be in general accordance with the relevant policy provisions of NPS EN-1, the

UK Marine Policy Statement and EIEOMP. The Secretary of State also agrees with the ExA's conclusion that the adverse socio-economic impacts on tourism would not be so much as to weigh significantly against the Order being made [ER 18.2.35]

16. Other National Policy Statement Matters

16.1 The Secretary of State notes the ExA also considered other matters, which are required to be taken into account by NPSs EN-1 and EN-3, including the functional aspects of design, climate change adaptation, flood risk, waste management and water quality. The Secretary of State agrees that the Applicant has taken these into account and, where appropriate, control mechanisms would be secured in the recommended Order and these are not matters which weigh significantly against it being made [ER 18.2.36]. The Secretary of State is satisfied that no activities associated with the Development would result in deterioration of surface water or ground water status and making the recommended Order would be consistent with Regulation 3 of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 [ER 18.2.27]. The Secretary of State is also satisfied that as required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard in the ExA's Report to the United Nations Environmental Programme Convention on Biological Diversity in relation to the likely impacts of the Development [ER 18.2.38] and that in relation to other consents that would or may be required to facilitate the Development, without prejudice to future decision-makers, there are no apparent impediments to the implementation of the Development [18.2.39].

17. Consideration of Compulsory Acquisition and Related Matters

17.1 The Secretary of State notes that to support the delivery of the Development, the Applicant is seeking Compulsory Acquisition ("CA") powers in the Order for both the acquisition of new and existing rights over land, including temporary rights, for which it had not been able to acquire by voluntary agreement. The freehold land that the Applicant seeks to acquire compulsorily is required for: the onshore booster station (Plot 9-012) at Little Barningham (should HVAC transmission be selected); and the converter/substation at Swardeston (Plot 33-014). New rights over land are required to landscape the two station sites (Plots 9-002, 9-004, 9-011, 9-020, 9-023 should HVAC be selected and Plots 33-012, 33-013, 33-020 and 33-022). The majority of the rights to be acquired compulsorily relate to the cable route and are new connection work rights. New rights over land would also be required for access for construction and maintenance. Temporary possession would also be required for storage compounds during construction, including the main construction compound at Oulton airfield and also for access roads to the cable route required during construction.

17.2 The Planning Act 2008, together with related case-law and guidance, provides that compulsory acquisition can only be granted if certain conditions are met. Under section 122 of the Planning Act compulsory acquisition may only be authorised if:

- the land is required for the development to which the consent relates, or
- it is required to facilitate or is incidental to that development; or
- it is replacement land which is to be given in exchange for the Order land under sections 131 or 132 of the Planning Act and

there is a compelling case in the public interest. In connection with this:

- The land required to be taken must be no more than is reasonably required and be proportionate
- there must be a need for the project to be carried out;
- all reasonable alternatives to compulsory acquisition have been explored;
- the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the interference with the human rights of those affected.

17.3 The Applicant is also seeking to vary the statutory time limit for the exercise of CA powers from 5 to 7 years. It is noted that although the National Farmers' Union/Land Interest Group considered this was not necessary, as this would encourage the Applicant to complete the Development more quickly, in the Applicant's view having 7 years would allow more time for HVDC technology to advance, potentially requiring a smaller land take [ER 19.5.28]. The Secretary of State agrees that the Applicant has a clear idea of how the land to be acquired would be used, has justified its reasons in seeking design flexibility for the transmission system and that the land is reasonably required in order to deliver the Development [ER 19.6.7].

17.4 The Secretary of State is also satisfied that the documents submitted by the Applicant meet the requirements of the relevant legislation and guidance [ER 19.6.2] and that the Applicant has explored reasonable alternatives and that CA would be exercised only over the land required [ER 19.6.6]. Although also queried by the National Farmers' Union/Land Interest Group during the examination, the Secretary of State is satisfied that there is a reasonable prospect of the requisite funds for acquisition becoming available, and that adequate funding is likely to be available within the necessary timescale, to meet all financial liabilities arising from the compulsory acquisition and temporary possession powers sought and is also content that both phases of the Development could be funded should that be the way the Development is eventually delivered [ER 19.6.31 – ER 19.6.33]. Further, Article 43 of the Order would also require that there must be a guarantee or an alternative form of security in place in respect of the liabilities of the undertaker to pay compensation before compulsory acquisition powers are exercised.

Representations in respect of Compulsory Acquisition and Temporary Possession

17.5 The Secretary of State notes that there were 55 Relevant Representations and 3 Written Representations relating to compulsory acquisition and temporary possession issues. Of these, 53 representations were submitted by the Land Interest Group (“LIG”) who represented 53 landowners. The National Farmers Union represented LIG in the examination. Other representations were received from: Carter Jonas, representing Saltcarr Farms Limited [ER 19.5.74, ER 19.6.26 – ER 19.6.30], Gerald Bullimore and Sherrill Bullimore (two representations) [ER 19.5.7, ER 19.6.20 – ER 19.6.22]; and Martin Kemp [ER 19.5.73, ER 19.6.23 – ER 19.6.25]. A specific compulsory acquisition hearing was held to consider compulsory acquisition matters [ER 19.5.22 – ER19.5.23]. At the close of the examination, the ExA understood that LIG’s remaining matters of disagreement concerned soil reinstatement and construction over two phases leading to greater impact on farm businesses [ER 19.5.58]. Objections also remained from Gerald and Sherrill Bulimore, Martin Kemp and Saltcarr Farms Limited [ER 19.5.59]. In addition, there were issues relating to Crown land and a Statutory undertaker which were also unresolved and which are considered further below.

17.6 In respect of the landowners represented by LIG, the Secretary of State agrees that the compulsory acquisition powers sought over the relevant Plots would be proportionate and justified by the public interest in facilitating the Development [ER 19.6.19].

17.7 In respect of Gerald Bullimore and Sherrill Bullimore’s remaining objection to the use of compulsory acquisition powers in relation to a smallholding near Kelling at the north end of the cable route and their suggested alternative route, the Secretary of State is satisfied that the Applicant had carried out a reasonable route refinement process, which took account of a wide range of constraints and had provided reasons for the choices made. The Secretary of State agrees that the compulsory acquisition powers sought over the relevant Plots would be proportionate and justified by the public interest in facilitating the Development [ER 19.6.22].

17.8 The Secretary of State agrees that in respect of the temporary use of land plots owned at Saltcarr Farms Limited at Oulton airfield, their acquisition would be proportionate and justified by the public interest in facilitating the Development [ER 19.6.30].

17.9 In respect of new connection works rights and new access rights over Martin Kemp’s land, it is noted his objection is to the cable route coming through his farm to the north of Norwich Road, which he stated he has been promoting for land development for 30 years and considered would be sterilized by the cable corridor. The Secretary of State is satisfied that there was no evidence to show that there were any development proposals for Martin Kemp’s land which were sufficiently advanced to carry weight in the examination and agrees that acquisition of the powers sought would be proportionate and justified by the public interest in facilitating the Development [ER 19.6.23-19.6.25].

Crown Land

17.10 The Secretary of State notes that consent has been granted by The Crown Estate (“TCE”) under section 135(1) of the Planning Act 2008 in respect of Crown land on the foreshore. This is conditional on it being consulted if any variation to the Order is proposed which could affect other provisions of the Order subject to sections 135(1) and or 135(2) of the Planning Act 2008, and the inclusion and continuing application of Article 41 as drafted by TCE. [ER 19.4.17 – ER 19.4.22 and ER 19.6.50 - ER 19.6.2].

17.11 The Secretary of State also notes that consent for compulsory acquisition of an interest in Crown land held otherwise than by or on behalf of the Crown was sought in respect of land owned by the Secretary of State for Environment, Food and Rural Affairs at Bodham Wood and subsequently consented by the Forestry Commission on behalf of the Secretary of State [ER 19.4.22].

17.12 Consent for Crown land held otherwise than by or on behalf of the Crown was also sought from the Secretary of State for Defence in respect of a Category 2 interest in land at the north end of the onshore cable route at Weybourne Military Camp and a Category 2 interest in land at the southern cable end between the Network Rail line and Cantley Lane. Although a representation was made which did not maintain any safeguarding objections, the necessary consent from the Secretary of State for Defence had not been received at the close of the examination [ER 19.4.21 and ER 19.5.63]. The Secretary of State therefore consulted the Ministry of Defence on 11 July 2019 in order to established whether consent was granted or not. Consent, pursuant to section 135(1) and section 135(2) of the Planning Act 2008, was subsequently received on 25 July 2019.

Statutory Undertakers

17.13 The Secretary of State notes that the application includes powers of compulsory acquisition in respect of statutory undertakers and that Protective Provisions in the Order were also sought with a number of statutory undertakers. At the close of the examination only Network Rail had not reached agreement with the Applicant in respect of Plot 30-028 and the only remaining disputed Network Rail Protective Provisions in question related to indemnity, transfer of benefit of the Order and arbitration [ER 19.6.37 – ER 19.6.43 and ER19.5.64 - ER 19.5.71]. Where a representation is made under section 127 of the Planning Act 2008 and has not been withdrawn the Secretary of State’s power to grant such powers may be exercised only if the Secretary of State is satisfied of specified matters. The Secretary of State agrees that the Applicant’s preferred provisions would be sufficient to ensure that the exercise of compulsory acquisition powers in respect of the Plot in question would not result in serious detriment to Network Rail’s undertaking [ER 19.6.34 – ER 19.6.36 and ER 19.6.37 – ER 19.6.43].

17.14 In view of the above, the Secretary of State agrees that the tests in sections 127(6) and 138 of the Planning Act 2008 are satisfied [ER 19.6.44].

Public Open Space

17.15 The Secretary of State notes that no party sought to disagree with the Applicant's conclusion that the open space land, if burdened with the rights sought in the Order, would be no less advantageous to the public than it was before. The main issues in respect of interference with public open space relate to beach closures for construction of the landfall works near Weybourne and to proposed cable crossings at Bodham Wood and the Marriotts Way heritage trail. As indicated earlier, the Secretary of State is content that beach closures would be temporary and relatively short term with footpath diversions in place for users of the Norfolk Coast Path and a requirement contained in the ExA's recommended Order makes provision for approval of Public Right of Way Management Plans. The Secretary of State also notes the temporary and short-term nature of the closure to Bodham Wood, which is not a public right of way. No closure of the Marriotts Way heritage trail would be required due to the Applicant's use of HDD. In conclusion, the Secretary of State agrees that the land in question when burdened with the Order right would be no less advantageous than it was before and the requirements of section 132(3) of the Planning Act 2008 are satisfied [ER 19.6.45 – 19.6.49].

Human Rights

17.16 The ExA concluded that if the Secretary of State were to decide that development consent should be granted and that compulsory acquisition is necessary to facilitate the Development:

- any infringement of European Convention on Human Rights rights would be proportionate and justified in the public interest;
- the provisions in the recommended Order would strike a fair balance between the public interest in the development going ahead and the interference with the rights of those affected; and
- any interference would be in accordance with the law.

17.17 The Secretary of State sees no reason to disagree with the ExA's conclusion that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Overall Conclusion in respect of Compulsory Acquisition and Temporary Possession

17.18 Because the ExA concluded that development consent should not be granted, it consequently considered that the compelling case in the public interest for the land to be acquired compulsorily had not been made out. However, it was mindful that the Secretary of State might conclude that development consent should be granted and so examined the case for Compulsory Acquisition and Temporary Possession on that basis. The Secretary of State considers that relevant legislation and guidance relating to compulsory acquisition and temporary possession have been followed by the Applicant and that, given his overall consideration that development consent for the

proposed Development should be granted, there is a compelling case in the public interest to grant compulsory acquisition and temporary possession powers to facilitate the Development.

18. Representations following the close of the examination (issues other than the Habitats Regulations Assessment)

Representations made before the Secretary of State's consultations on HRA matters

18.1 Post-examination representations were received after the close of the examination, but before the Secretary of State's consultations, from: the Rt Hon Keith Simpson MP, seeking comments on a letter received from his constituent Polly Brockis; the Rt Hon Lord Tebbit, drawing attention to a representation made by Sir John White; Alison Shaw on behalf of 23 Parish Councils in Norfolk; Professor Tony Barnett (2 representations); Helen Monk and Chris Monk; and Geoff Lyon, Major Projects Manager at North Norfolk District Council.

18.2 In addition, as mentioned in section 17 above, a representation was also received from the Ministry of Defence in response to the Secretary of State's request for further clarification in respect of Crown land. The Applicant also provided supplementary ornithological comparison data to the Secretary of State on 31 July 2019, which is considered further in section 7 above.

The Rt Hon Keith Simpson MP/Polly Brockis

18.3 The Secretary of State notes that Ms Brockis participated in the examination and made representations (REP7-113, REP10-052 and REP10-053) concerning the impact of construction traffic on the road network and properties in Cawston village. The Secretary of State considers Ms Brockis' letter raises no new substantive issues not already considered by the ExA in the examination.

The Rt Hon Lord Tebbit/Sir John White

18.4 Two representations concern the effect of onshore cable route on two mature hedges on the Salle estate. The Applicant responded by setting out the principle behind its hedgerow and tree embedded mitigation i.e. to minimise vegetation removal. The Secretary of State notes the ExA's conclusion that the Applicant's approach to minimise harm to the landscape, including proposed mitigation, is reasonable and proportionate [ER 12.5.5]. In line with that conclusion, he expects the Applicant in line with its mitigation principle, to make every reasonable effort to ensure that harm to landscape is minimised including where proposed construction techniques require the removal of hedges.

Alison Shaw on behalf of 23 Parish Councils in Norfolk

18.5 The representation asked the Secretary of State to consider strategic planning for grid connection arrangements for offshore wind farms in the North Sea and to allow

time to consider the implications of the power outage that occurred on 9 August 2019. Consideration of the issue of strategic planning for offshore transmission is set out in paras 18.23-18.24 of this letter. The Secretary of State does not consider that the power outage that occurred on 9 August 2019 has implications for the consideration of this Application.

Professor Tony Barnett

18.6 The two late representations from Professor Barnett are included in two separate e-mail chains: i) correspondence with the Planning Inspectorate Case Manager for the Application and ii) subsequent correspondence with the Applicant, which has also been copied to the Planning Inspectorate.

18.7 Having considered in consultation with the Planning Inspectorate the matters in respect of Public Health England's ("PHE") position, the Secretary of State considers that PHE's consultation representation supports the clarification provided to Professor Barnett by the Planning Inspectorate and the Applicant on PHE's position and that there were no other representations from PHE that were not taken into account. The Secretary of State is satisfied therefore that neither of the two late representations Professor Barnett raise any new issues not already considered by the ExA during the examination.

Helen Monk and Chris Monk

18.8 The Secretary of State notes that Helen and Chris Monk participated in and made a number of representations (AS-012, RE6-082, REP7-106, REP8-014 and REP10-002) during the examination. Their late representation provided further information and photographic evidence relating to an unannounced abnormal load on its way to Salle Farms on 15 May 2019 that got stuck and caused damage to a property in Cawston High Street. Although not related to the Development, they consider it demonstrates the difficulties that large vehicles could have negotiating the highway. The Secretary of State considers it does not necessarily follow there would be similar difficulties for construction traffic for the proposed Development. He notes that the ExA conducted accompanied and unaccompanied site visits to Cawston during the examination (EV-017, EV-029a and EV-036). The Secretary of State further notes that NCC considered that a suitable access strategy can be produced that mitigates impact [ER 10.4.31] and that the ExA concluded that appropriate measures would be secured through the detailed CTMP to avoid significant traffic and highway impacts at Cawston. There is no reason to suppose therefore that the ExA was not fully aware of the potential traffic impacts on Cawston High Street and in the sufficiency of the proposed traffic mitigation measures in making its recommendations to the Secretary of State. The incident highlighted by Helen and Chris Monk took place in advance of such measures being in place. The Secretary of State considers that the ExA's conclusions in respect of traffic and highway impacts at Cawston remain valid notwithstanding the incident highlighted in this representation.

North Norfolk District Council

18.9 The Secretary of State notes that the purpose of the late representation from North Norfolk District Council was to bring the Secretary of State's attention to events at the examination of Norfolk Vanguard Offshore Wind Farm. Given North Norfolk District Council consider there are significant similarities with the Development, it considers it would be desirable if similar approaches be taken to the two projects when they are dealing with comparable matters. The representation draws attention to the need for mitigation of potential tourism/socio-economic impacts which were also raised at the Norfolk Vanguard examination. North Norfolk District Council consider that a similar Community Benefit Fund requirement to one they proposed in respect of Norfolk Vanguard should be included in the Order for the Development.

18.10 For the reasons set out in the ExA's Report [ER 15.4.17 – ER 15.4.19], the Secretary of State agrees with the Applicant that any Community Benefit Fund should be voluntary and not secured through the Order. Given there was also no clear evidence of significant adverse impacts on tourism, the Secretary of State is not persuaded that the inclusion of such a Requirement in the Order, should it be granted in due course, is necessary. As such, the Secretary of State concludes that no further weight should be given to the representation on this issue.

Representations made as part of the Secretary of State's consultations and in response to the "minded to" letter

18.11 On 27 September 2019 and 2 March 2020, the Secretary of State carried out consultations in respect of the HRA. Responses were received from a number of parties which either focussed on the HRA or had no further comments to make. Where responses focus on the HRA, those representations were considered as part of that assessment which is discussed in section 6 of this letter. However, a number of parties raised issues outside of the HRA. A number of representations were also received following the publication of the "minded to" letter. The Secretary of State's consideration of those representations which raised other issues not directly connected with the HRA is set out below.

Cawston Parish Council

18.12 Cawston Parish Council in their representation of 13 February 2020 considered that the Highway Intervention Scheme for Cawston village had fatal flaws and was not sufficient to offset any potential harm from the Development traffic alone, or in-combination traffic effects arising from the proposed Norfolk Vanguard project and the Development, in the event that both were granted development consent. Cawston Parish Council noted that, in respect of the proposed Order for the Norfolk Vanguard project, the Secretary of State had consulted on amending the requirement in respect of its construction traffic management plan to require revised details of a scheme of traffic mitigation in respect of Cawston village.

18.13 The Secretary of State notes that the ExA acknowledges [ER 10.4.35] that the mitigation proposals for Cawston were not fully resolved by the end of the examination. Nevertheless, the mitigation proposals were sufficiently developed for the ExA to conclude that there was a good prospect that the outstanding matters would be resolved. The ExA attached significant weight to Norfolk County Council's comments in this regard and concluded that appropriate measures would be secured through the CTMP to avoid significant traffic and highway impacts. The final highway intervention schemes and other traffic mitigation measures would be secured in the final CTMP through Requirement 18 of Schedule 1 to the Order.

18.14 In the "minded to" letter, the Secretary of State suggested a revision to Requirement 18 so that it reflected a similar amendment to the development consent order for Norfolk Vanguard in respect of a scheme of mitigation for construction traffic through Cawston. The Applicant, Norfolk County Council and Cawston Parish Council all responded to the Secretary of State's request for comments on that proposed amendment to the Order. The Applicant stated that a Cawston Highway Intervention Scheme ("HIS") had been agreed with Norfolk County Council which includes highways mitigation measures to deal with the cumulative impacts of the Development and both Norfolk Vanguard and Norfolk Boreas offshore wind farm projects. The Applicant therefore requested that the suggested amendments to Requirement 18 should not be made. Norfolk County Council referred to the Cawston HIS and suggested that to avoid confusion, the Requirement should make it clear that the revised proposals should be based on that scheme. Cawston Parish Council wrote to express their concerns about the cumulative transport impact on Cawston notwithstanding the Cawston HIS which it considered did not resolve those concerns. In a further response (2 November 2020), Cawston Parish Council reiterated their concerns over construction traffic especially in respect of the cable drum abnormal loads. The Applicant (2 November 2020) also offered further comment on the abnormal load movements.

18.15 The Secretary of State has considered the responses received. He notes the continuing concerns of Cawston Parish Council but places significant weight on the fact that Norfolk County Council as the Highways Authority are content with the Cawston Highway Intervention Scheme. He has therefore changed his proposed amendments to make specific reference to the Cawston HIS.

The Eastern Inshore Fisheries and Conservation Authority and the Norfolk Independent Fishermen's Association

18.16 The Eastern Inshore Fisheries and Conservation Authority and the Norfolk Independent Fishermen's Association both made representations following the close of the examination. To the extent that those representations concern the effects of the Development on commercial fishing rather than the HRA, the Secretary of State notes

and agrees with the conclusions of the ExA that commercial fishing is not a matter which weighs significantly against the Order being made [ER 8.5.5].

Jonas Seafood Limited

18.17 Jonas Seafood Limited made a representation suggesting that the Applicant should help the business with a financial package and pay compensation to fishermen. The Secretary of State notes that ExA considers that the Fisheries Co-existence and Liaison Plan would provide appropriate mitigation for impacts on the UK potting fleet and he agrees with the conclusions of the ExA in respect of commercial fishing that it is not a matter that weighs significantly against the Order being made [ER 8.5.5].

National Farmers Union

18.18 The National Farmers Union (“NFU”) made a representation concerning two issues. Firstly, it expressed a concern about landowners having to deal with more than one entity in the event that more than one offshore transmission owner (“OFTO”) is involved and requested a joint managing agent be appointed in that event. The Secretary of State considers that that would be a matter for the OFTOs to arrange should that situation occur. Secondly, the NFU is concerned that the Applicant has not engaged with other parties on the configuration of the cables at the crossing point between the Development and the Norfolk Vanguard/Norfolk Boreas cables. The Secretary of State notes that the ExA has considered the question of the crossing point and is satisfied that the matter is adequately dealt with, including by the protective provisions for the benefit of Norfolk Vanguard and Norfolk Boreas projects in the Order.

Natasha and Stephen Hall

18.19 Natasha and Stephen Hall made a representation concerning the effects of the converter station on their property and requested that the Applicant should purchase their property. The Secretary of State notes that the ExA had considered the effects of the converter station in its report and concluded that those effects would not be such as to outweigh the benefits of the Development. The purchase of the said property by the Applicant would therefore be a private matter for the owners of the property and the Applicant.

Weybourne Parish Council

18.20 Weybourne Parish Council raised concerns about the open cut techniques being propose for the cable landfall at Weybourne. The Secretary of State notes that the ExA considered this issue [ER 5.7.1 – 5.7.6] and had not identified any impacts that would lead it to conclude that open cut techniques should be excluded from the

design envelope. The Secretary of State agrees with the ExA that open cut techniques should remain in the design envelope alongside horizontal directional drilling.

Kellas North Sea 2 Limited

18.21 Subsequent to the “minded to” letter, the Secretary of State was made aware of a letter dated 6 April 2020 from Kellas North Sea 2 Limited (“Kellas”) in respect of the Esmond Transmission System and its interaction with the Development. As a result, the Secretary of State requested comments from the Applicant in respect of the matters set out in the letter from Kellas. In a joint letter dated 4 September 2020, the Applicant and Kellas confirmed that the matters raised in the letter of 6 April 2020 had been addressed. The Secretary of State is therefore taking no further action in respect of this matter.

Paul Wheelhouse, Member of Scottish Parliament (MSP)

18.22 In response to the “minded to” letter, Paul Wheelhouse MSP wrote on behalf of the Scottish Government setting out its view that seeking to implement environmental compensatory measures at sites geographically distant from the affected area may reduce the benefit of that compensation. The Secretary of State’s consideration of the proposed compensatory measures are set out in section 6 of this letter and in his HRA although he notes that the compensatory measures which the Applicant proposes are not based in sites in Scotland.

Representations received outside of consultation periods

18.23 A number of parties made representation after the close of the consultation periods. These parties included the National Farmers Union, Oulton Parish Council, Cawston Parish Council, Necton Parish Council, Brandiston Parish Council, Mulbarton Parish Council, High Kelling Parish Council and members of the public. The issues raised by these representations included traffic impacts on Cawston and Oulton villages, the construction compounds at Oulton, and the impacts of the cables and onshore substations including in respect of landscape, wildlife and agricultural land. The Secretary of State considers that those issues were assessed fully during the examination and does not consider that these representations contain any matters that would lead him to disagree with the ExA’s conclusion on those matters beyond his consideration of Cawston Parish Council’s representation of 13 February 2020 referred to in paras 18.12 to 18.15 above.

18.23 A number of these representations suggested that the Secretary of State should delay his decision on the Application until he had fully assessed proposals for a co-ordinated approach to offshore transmission possibly by means of an ‘offshore ring main’ whilst a representation on behalf of 30 Norfolk Parish Councils dated 28 December 2020 asked the Secretary of State to refuse to grant consent to the Development because its proposed transmission network was sub-optimal. The

Secretary of State notes that the possibility of an offshore ring main was raised during the examination but, that as the ExA did “not have any detailed information on which to assess it” [ER 5.9.9], it could not comment on the merits of the proposal. The Secretary of State notes that NPS EN-3 states “When considering grid connection issues, the IPC should be mindful of the constraints of the regulatory regime for offshore transmission networks” [para 2.6.36]. The Secretary of State considers that the offshore transmission proposal for the Development has been brought forward in line with the existing regulatory regime. In July 2020, BEIS launched a review of the offshore transmission network. Whilst the review is exploring early opportunities for coordination for projects connecting between 2025-2030, it is not intended to automatically apply to applications for development consent which are currently in the planning system. Existing policy will continue to apply to such applications. The Secretary of State therefore considers that he should continue to assess the Development in line with current policy as set out in the NPSs.

18.24 A representation from Mulbarton Parish Council in December 2020 made reference to the Integrated Offshore Transmission Project (East), a project taken forward by National Grid together with offshore wind developers Forewind, Smart Wind, DONG Energy, Scottish Power Renewables and Vattenfall. The Secretary of State has reviewed the Conclusions and Recommendations document (August 2015) from that project but does not consider that it contains any information that would cause him to reconsider his conclusions on the Application. The representation also raised concerns about the cumulative impacts with the proposed extension projects for the existing Dudgeon and Sheringham Shoal offshore wind farms. The Secretary of State has considered the issues raised but does not consider the representation contains any information that would cause him to reconsider his conclusions on the cumulative impact of the Development. He further notes that the cumulative impacts of the extension projects will be considered in detail if applications are made for development consent for those projects. Finally the representation raised points in connection with a possible alternative site for the onshore substation. The Secretary of State has considered the Application in front of him and has found it to be acceptable in planning terms and does not consider that any of the points raised in connection with the alternative site affect that conclusion.

19. General Considerations

Human Rights

19.1 The Secretary of State notes that the ExA considered human rights in relation to the application as amended with reference to:

- Article 1 of the First Protocol to the European Convention on Human Rights (“ECHR”) (peaceful enjoyment of possessions);
- Article 6 of the ECHR (fair and public hearing);

- Article 8 of the ECHR (respect for private and family life, home and correspondence).

19.2 In conclusion, the Secretary of State agrees with the ExA that as he is granting development consent and compulsory acquisition is necessary to facilitate the Development, then:

- any infringement of ECHR rights would be proportionate and justified in the public interest;
- the provisions in the recommended Order (as amended) would strike a fair balance between the public interest in the development going ahead and the interference with the rights of those affected; and
- any interference would be in accordance with the law [ER 19.6.58].

Equality Act 2010

19.3 The Equality Act 2010 includes a public sector “general equality duty”. This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; disability; gender reassignment; marriage and civil partnerships⁷; pregnancy and maternity; race; religion and belief; sex and sexual orientation. In respect of the above, the Secretary of State notes that there were no representations made by any parties in respect of its Equalities Impact Assessment or the public sector general equality duty and the ExA saw no reason to disagree with the findings of the assessment and concluded that there was no evidence of any differentiated or disproportionate impacts on groups with protected characteristics [ER 19.6.59 – 19.6.60]. The matter has been considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

Natural Environment and Rural Communities Act 2006

19.4 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

⁷ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

19.5 The Secretary of State is of the view that the ExA's Report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the views set out in this letter, the Secretary of State has had due regard to conserving biodiversity.

Climate Change Act and the Net Zero Target

19.6 On 2 May 2019, the Climate Change Committee recommended the UK reduce greenhouse gas emissions to net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.

19.7 The Secretary of State notes that the NPSs continue to form the basis for decision-making under the Planning Act 2008. Although the ExA was unable to consider this matter as it occurred after the close the examination, it did conclude that the Development would meet one of the fundamental and urgent objectives set out in NPSs EN-1 and EN-3 of "reducing carbon emissions, in line with the unamended Climate Change Act 2008, by decarbonising UK energy production by growing the development of offshore renewable energy" [ER 17.6.17]. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has made that objective any less urgent and that therefore the Development is still in accordance with the NPSs in that respect.

20. Secretary of State's conclusions

20.1 The Secretary of State notes that the ExA concluded that:

- Significant weight should be attached to the Development's contribution to the delivery of renewable energy in which it supported the objectives of EN-1 and EN-3. The Development would not accord with EN-1 and EN-3 insofar as they relate to offshore ecology. In all other respects it would accord with EN-1, EN-3 and EN-5. Looking at the relevant NPSs in the round, the Development accords with them when they are considered as a whole.
- The contribution to renewable energy would also support the objectives of the Marine Policy Statement and the East Inshore and East Offshore Marine Plans (EIEOMP). The Proposed Development would not accord with the Marine Policy Statement and EIEOMP insofar as they relate to offshore ecology. In all other respects it would accord with the Marine Policy Statement and EIEOMP.

Looking at the Marine Policy Statement and EIEOMP in the round, the proposed Development accords with them when they are considered as a whole.

- It could not be satisfied that the Development would not adversely affect the integrity of European sites and that the tests in the Habitats Regulations have been met. It also concluded a significant risk that the Development would hinder the conservation objectives of two MCZs. In the absence of any evidence on site-specific compensatory measures for the affected SACs and MCZs, it could not be assured that determining the application in accordance with the relevant NPS would not lead to the UK being in breach of its international obligations under the Habitats Directive. Mindful of section 104(4) of PA2008, it therefore recommended that development consent should not be granted.

20.2 Having reached that conclusion in respect of the Habitats Directive, the ExA considered that it was not necessary to conclude on the balance of adverse impacts and benefits but to assist the Secretary of State's consideration, it set out the weight it would attach to those impacts and benefits.

20.3 It concluded that any adverse impacts would be minor or where impacts would be sufficiently mitigated, such that they would not weigh significantly against the Order being made, in respect of the following factors:

- navigation and other offshore operations;
- commercial fishing
- land use and recreation;
- transport and highway safety;
- living conditions for local residents, including effects on human health;
- landscape and visual impacts;
- historic environment;
- onshore ecology;
- socio-economic (in relation to tourism and recreation); and
- other matters - functional aspects of design, climate change adaptation, flood risk, waste management and water quality.
- It attached significant weight to the harm it had identified in respect of offshore ecology.

20.4 It attached substantial weight to the contribution the Development would make towards meeting the national need for renewable energy demonstrated by EN-1 and moderate weight to socio-economic benefits relating to employment and gross value added.

20.5 The Secretary of State has carefully considered the Examining Authority's conclusions, the further information and representations he has received following the close of the examination and all other important and relevant matters.

20.6 Having completed the Habitats Regulations Assessment, he concludes, contrary to the Examining Authority's findings, that the Development, in combination with other plans or projects, would have an adverse effect on the integrity of the Flamborough and Filey Coast Special Protection Area for kittiwake. The Secretary of State also concludes that the Development alone and in combination with other projects would give rise to impacts on sandbanks that are slightly covered by seawater all the time, which are a qualifying feature of North Norfolk Sandbanks and Saturn Reef SAC and The Wash and North Norfolk Coast SAC: these impacts would adversely impact the integrity of those SACs.

20.7 Having completed the MCZ assessment, he concludes, contrary to the Examining Authority's findings, that the Development would not significantly hinder the conservation objectives of either the Cromer Shoal Chalk Bed MCZ or Markham's Triangle MCZ.

20.8 The Secretary of State is satisfied that there are no alternatives to fulfilling the objectives of the Development and that the Development provides a benefit that is imperative to the public interest. He is also satisfied that the public benefits of the Development would over-ride the impacts to the Flamborough and Filey Coast Special Protection Area and the North Norfolk Sandbanks and Saturn Reef Special Area of Conservation and The Wash and North Norfolk Coast Special Area of Conservation, if appropriate compensation is secured. He is further satisfied that appropriate compensation would be secured by the conditions he intends to attach to the Order.

20.9 Having secured the necessary compensation for the possible adverse effects of the Development on the Flamborough and Filey Coast Special Protection Area and the North Norfolk Sandbanks and Saturn Reef Special Area of Conservation and The Wash and North Norfolk Coast Special Area of Conservation, he concludes that the adverse impacts identified by the Examining Authority, including the significant harm it identified in respect of offshore ecology, do not outweigh the significant benefits of the Development in respect of contribution it would make to meeting the identified need for renewable electricity generation.

20.10 In the light of that conclusion, and having carefully considered the Examining Authority's report, the further information and representations he has received following the close of the examination and all other important and relevant matters, the Secretary of State concludes that development consent should be granted in respect of the Development.

21. Modifications to the draft Order

21.1 Following consideration of the draft Order provided by the ExA the Secretary of State has made the following modifications to the draft Order:

- Amendments to Article 5 to confirm that the provisions of the Order have effect solely for the benefit of the undertaker and also in relation to the transfer of benefit of the order. In particular, amendments to the notice provisions and removal of references that would have permitted the transfer of part of the deemed marine licence. This is also consistent with the position taken in previous Development Consent Orders.
- An amendment to Article 26(4) to remove the term “temporary”. It appears that only those works specified in subparagraphs 26(4)(a)-(d) are to remain after the undertaker gives up temporary possession and the amendment confirms this.
- Removal of provisions in Article 37 for referral to CEDR should the Secretary of State fail to make a reference to arbitration.
- The inclusion of provision for service of documents at Article 44.
- Amendments to Schedule 1 to reflect the revisions to the design parameters of the project made by the applicant following examination.
- Proposed new requirement 18 regarding the Highways’ Intervention Scheme (see paragraph 18.4 above).
- Conditions have been included in the DCO to secure the provision of compensation in relation to the impacts on the Flamborough and Filey Coast Special Protection Area and the North Norfolk Sandbanks and Saturn Reef Special Area of Conservation and The Wash and North Norfolk Coast Special Area of Conservation.

21.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency. The Order, including the modifications referred to above is being published with this letter.

22. Challenge to decision

22.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

23. Publicity for decision

23.1 The Secretary of State’s decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

23.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

Gareth Leigh

Gareth Leigh
Head of Energy Infrastructure Planning

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/hornsea-project-three-offshore-wind-farm/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).