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Our Ref: EN010098

12 July 2023

Dear Mr Carolan,

## **PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR THE HORNSEA PROJECT FOUR OFFSHORE WIND FARM**

### **1. Introduction**

- 1.1 I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the report dated 22 November 2022 of the Examining Authority (“the ExA”), comprising five examining Inspectors, Jo Dowling, Stephen Bradley, Gavin Jones, Rod MacArthur, and Andrew Mahon, which conducted an examination into the application (“the Application”) submitted on 22 September 2021 by Ørsted Hornsea Project Four Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Hornsea Project Four Offshore Wind Farm (“the Proposed Development”).
- 1.2 The Application was accepted for examination on 26 October 2021. The examination began on 22 February 2022 and concluded on 22 August 2022. The Secretary of State received the report containing the ExA’s conclusions and recommendation on 22 November 2022. A total of 43 Relevant Representations (“RRs”) (as defined in the 2008 Act) were received by the Planning Inspectorate. In addition, a late RR was accepted as an additional submission.
- 1.3 The Order as applied for, would grant development consent for the Proposed Development, which includes: the construction and operation of an array of up to 180 wind turbines and their foundations; the construction of up to six offshore transformer substations; up to three High Voltage Direct Current (“HVDC”)

converter substations or up to three offshore High Voltage Alternating Current booster stations; one offshore accommodation platform; the construction of a network of subsea electrical circuits connecting the wind turbines, offshore collector substations, offshore HVDC converter stations and offshore accommodation platforms; the construction of a marine connection to the shore; at landfall, the offshore export cables would be joined to the onshore export cables at up to six underground transition joint bays; the construction of an Onshore Substation (“OnSS”) and Energy Balancing Infrastructure (“EBI”) with associated facilities in the vicinity of Creyke Beck, north of Cottingham; the construction of a connection consisting of up to four underground electrical circuits between the OnSS and the National Grid Electricity Transmission substation at Creyke Beck; and other associated development.

- 1.4 The Application includes proposals for the compulsory acquisition of the freehold of land, the compulsory acquisition of rights (and restrictions) over land and temporary possession of land [ER 15.1.1].
- 1.5 The principal matters considered by the ExA are considered in the report under the following broad headings: commercial fishing and fisheries; compulsory acquisition (“CA”); design; the draft Development Consent Order (“DCO”); Environmental Impact Assessment (“EIA”) and Environmental Statement (ES); Habitats Regulations Assessment (“HRA”); historic environment (onshore and offshore); infrastructure and other users; landscape and visual effects; marine and coastal geology, oceanography and physical processes; marine ecology; navigation and radar (marine and air) including effects on shipping routes; noise, vibration, Electro Magnetic Fields (“EMFs”) and light; onshore ecology; onshore water environment; Proposed Development and site selection; socio-economic and land use effects; and traffic and transport and Public Rights of Way (“PRoW”).
- 1.6 Published alongside this letter on the Planning Inspectorate’s National Infrastructure website is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the ExA Report”). The main features of the development proposals, as applied for, and site are set out in chapter 2 of the ExA’s Report. The ExA’s findings are set out in chapters 7 to 17 of the ExA Report, and the case for development consent and the ExA’s conclusions on the terms of the Order are set out at sections 14 and 16 respectively.
- 1.7 Following receipt of the ExA’s Report, the Secretary of State requested further information from various parties on 16 December 2022, on 9 February 2023, 3 March 2023, 20 March 2023, 5 April 2023, and 27 April 2023. Interested Parties were invited to comment on the first four of these letters on 20 April 2023. Interested Parties were invited to comment on the latter two of these letters on 18 May 2023. The responses received are referenced where appropriate in the relevant sections of the decision letter below.

## **2. Summary of the ExA Recommendation**

- 2.1 The ExA’s recommendation in section 17.2 (page 262 of Volume 3 of the ExA Report) is as follows:

*“For all of the above reasons and in light of the ExA’s findings and conclusions on important and relevant matters set out in the Report, the ExA recommends that the Secretary of State for Business, Energy and Industrial Strategy cannot make the Hornsea Project Four Wind Farm Order.*

*In the event that the Secretary of State disagrees with the ExA’s findings in relation to the HRA, or if more conclusive evidence that appropriate compensation can be secured is provided after the close of the Examination, and consequently they decide to make the Hornsea Project Four Offshore Wind Farm Order, then the ExA recommends that, subject to obtaining Crown Consent, the Secretary of State should make the Order in the form recommended in Appendix C of this Report and subject to the actions set out in Tables 17.1 and 17.2 above.”*

- 2.2 This letter is intended to be read alongside the ExA’s Report and unless it is specifically stated that the Secretary of State disagrees with the ExA’s conclusions or recommendations then any perceived difference in emphasis between the summaries in this letter and the ExA’s Report should not be inferred as conveying disagreement with the ExA’s Report. Where not otherwise stated, the Secretary of State can be taken to agree with the ExA’s findings, conclusions and recommendations as set out in the ExA’s Report and the reasons given for the Secretary of State’s decision are those given by the ExA in support of the conclusions and recommendations.

### **3. Summary of the Secretary of State’s views**

- 3.1 The Secretary of State has considered the ExA’s Report and all other material considerations, including the information received after the close of the ExA’s examination. The Secretary of State’s detailed consideration of the ExA’s Report and the post-examination information is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER \*.\*.\*”]. This letter is a statement of the reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 3.2 The Secretary of State agrees with the ExA that the Proposed Development falls to be considered against National Policy Statement (“NPS”) EN-1, NPS EN-3 and NPS EN-5 [ER 4.4.1]. The Secretary of State agrees with the ExA that the relevant marine policy documents for this application are the Marine Policy Statement (“MPS”) and the East Inshore and East Offshore Marine Plan [ER 4.5.1]. The Local Impact Report (“LIR”) submitted by East Riding Yorkshire Council (“ERYC”) identified that the relevant development plan comprised the East Riding Local Plan Strategy Document (April 2016) and Allocations Document (July 2016); ERYC did not identify any conflict with the relevant development plan in either its LIR or Statement of Common Ground (“SoCG”), and no IPs raised conflict with development plan policies as an issue [ER 4.6.1 et seq.]. The ExA considered the National Planning Policy Framework (“NPPF”) and National Planning Practice Guidance (“NPPG”) in the relevant chapters of its report [ER 4.7.1 et seq.].

## 4. Matters considered by the ExA during the Examination

### Need for the Development

- 4.1 The ExA considered the relevant policy and legislation, including: NPS EN-1 [ER 5.1.1 et seq.]; NPS EN-3 [ER 5.1.5]; the Climate Change Act 2008 [ER 5.1.6], the Climate Change Act 2008 (2050 Target Amendment) Order 2019 [ER 5.1.8]; the Energy White Paper [ER 5.1.9 et seq.]; the Net Zero Strategy: Build Back Greener 2021 [ER 5.1.13 et seq.]; the British Energy Security Strategy 2022 (“BESS”) [ER 5.1.14 et seq.]; the Sixth Carbon Budget: The UK’s Path to Net Zero, December 2020 [ER 5.1.17 et seq.]; and the Draft Overarching National Policy Statement for Energy (EN-1), September 2021 [ER 5.1.19 et seq.].
- 4.2 The ExA notes that the Climate Change Act 2008 (2050 Target Amendment) Order 2019 has intensified the UK Government’s commitment to reducing greenhouse gas emissions, with the implementation of a target to achieve net zero by 2050, that the BESS and the Energy White Paper have emphasised the role of offshore wind in achieving this target, and that the draft NPS EN-1 indicates a direction of travel that goes beyond the current NPS EN-1 in terms of reducing greenhouse gas emissions [ER 5.3.1]. The ExA notes that although it is not possible at this stage to make a precise calculation as to the proportion of the envisaged 50GW of wind energy that the Proposed Development would contribute, it is the ExA’s view that it would be reasonable to consider that the Proposed Development would make a material contribution towards achieving the target of up to 50GW of offshore wind by 2030 [ER 5.3.6]. Further, the ExA notes that the Proposed Development would clearly contribute towards meeting the net zero obligation that is enshrined in law in the Climate Change Act 2008 (2050 Target Amendment) Order 2019 and in meeting rising future energy demand [ER 5.3.8].
- 4.3 The ExA concludes that *“notwithstanding the consideration of project-specific issues, the overarching need argument for the Proposed Development is very strong in terms of meeting the urgent need for low carbon energy, deliverability within a reasonable timeframe to meet growing energy demands, ensuring security of supply and on economic grounds, with costs for offshore wind having fallen significantly in the last decade. Therefore, the overall need argument weighs heavily in favour of making the Order”* [ER 5.3.9].
- 4.4 The Secretary of State agrees with conclusions of the ExA in relation to need. The Secretary of State notes that the insertion of protective provisions into the Order that reduce the overall available developable area may reduce the Proposed Development’s contribution but concludes that this reduction is not significant in scale and that substantial weight in favour of making the Order should be attributed to the contribution that the Proposed Development would make towards meeting the national need as demonstrated by NPS EN-1.
- 4.5 With regard to project-specific issues as referred to by the ExA [ER 5.3.9], the Secretary of State considers these in the relevant sections of this letter below.

## Site Selection and Alternatives

- 4.6 The ExA notes relevant policy and legislative considerations for site selection and alternatives, including the Infrastructure Planning (EIA) Regulations 2017 as amended (“the EIA Regulations”) and NPS EN-1 [ER 6.1.2 et seq.].
- 4.7 With regard to site selection and alternatives in respect of the onshore elements of the Proposed Development, the ExA notes that, taking into account the ExA’s findings on these matters in section 12.3 of the ExA Report on Traffic and Transport (including PRoW), the ExA is satisfied that the site selection process and consideration of alternatives has been appropriately undertaken by the Applicant.
- 4.8 With regard to site selection and alternatives in respect of the offshore elements of the Proposed Development, the ExA considered the refinement process the Applicant undertook for both the offshore array area and the offshore ECC [ER 6.4.2], and notes that the ExA has not been presented with any evidence that an alternative array area for the Proposed Development within the overall Agreement for Lease (“Afl”) area would be demonstrably preferable in terms of environmental or other constraints [ER 6.4.4]. The ExA considers the selection of the offshore ECC route to be reasonable [ER 6.4.5] and is of the view that the Applicant’s approach in terms of the EIA and consultation in relation to the assessment and reporting of alternatives is reasonable and adequate and in accordance with national policy objectives [ER 6.4.6].
- 4.9 The ExA considered the matter of the overlap area between part of the array area for wind turbine generators and the Endurance Storage which bp is proposing to use for the storage of carbon in chapter 10 of its Report [ER 6.3.4]. The Secretary of State considers this specific matter in paragraphs 4.44 – 4.46 of this decision letter.
- 4.10 Overall, the ExA is content that the Applicant has explored reasonable alternatives in terms of both the location and extent of the offshore array area, within the constraints imposed by the Crown Estate’s leasing process [ER 6.5.1] and furthermore concludes that the Applicant has undertaken an appropriate site selection process, having considered alternatives with due regard to the environmental, commercial and technological constraints for: the route of the offshore ECC; the offshore export cable landfall, the onshore ECC route; and the site for the OnSS and its access [ER 6.5.2].
- 4.11 The Secretary of State agrees with the ExA’s conclusions on this matter.

## Marine and Coastal Processes and Sediments

- 4.12 The ExA notes the relevant policy and legislative considerations for marine and coastal processes and sediments, including: the Marine and Coastal Access Act 2009 (“MCAA”); the UK Marine Policy Statement (“MPS”); the East Offshore and East Inshore Marine Plans (“EOEIMP”); and the East Riding Local Plan Strategy Document 2012 to 2029 [ER 7.2.1. et seq.].
- 4.13 ERYC’s LIR addressed coastal erosion matters and noted that the Applicant’s ES included a study of the effects of coastal erosion [ER 7.4.1]. Whilst the LIR

noted that some assessment work was ongoing, in principle the Council considered that the Proposed Development would not lead to an unacceptable impact on coastal process [ER 7.4.5].

#### *Impacts on Smithic Bank and the Holderness coast*

- 4.14 NE's and the MMO's RRs raised concerns about the baseline information and impact assessment relating to the geomorphology and evolution of Smithic Bank [ER 7.4.41], in relation in particular to the proposed installation of the export cable across the southern part of the Smithic Bank and the potential for this and the associated rock protection to result in the lowering of the Bank or the alteration of its morphology [ER 7.4.42]. In turn, there were concerns about potential secondary effects on other marine process receptors, including the Holderness coast [ER 7.4.43].
- 4.15 The ExA, whilst accepting the Applicant's position on Smithic Bank (that it is not a feature protected by designation) notes that the evidence appears to demonstrate that it plays an important role in regional sediment dynamics and movement, as well as providing some protection for beaches and an eroding shoreline [ER 7.5.15]. The ExA notes that the science and evidence is incomplete, and the ExA considers that the Applicant has gone to great lengths to clarify the assessment of possible effects, and that both this uncertainty and the assessment outcomes have been largely accepted in Professor Mike Elliot's peer review [ER 7.5.17]. The ExA accepts the contention of the MMO and NE in principle that post-construction monitoring is justified [ER 7.5.19] and is generally content that the Applicant's proposals, as set out in its Outline Marine Monitoring Plan, meets the definition of a proportionate scale and scope of monitoring [ER 7.5.20]. The ExA is content that the processes secured through Condition 13 of the Deemed Marine Licence will ensure any necessary clarifications can be secured by the MMO [ER 7.5.22] and provide a route for the further consideration of surveying and a cable burial risk assessment for the Smithic Bank area [ER 7.5.23].

#### *Impacts on the Flamborough Front*

- 4.16 The MMO's and NE's RRs raised concerns relating to elements of the Applicant's provision of information in relation to and assessment of the Flamborough Front in the ES [ER 7.4.72 et seq.]. The ExA was sympathetic to the issues raised by the MMO and NE and agreed that the sensitivity of the feature in relation to natural marine processes, productivity and a food chain leading to some important seabird populations was underestimated [ER 7.5.24]. The ExA was content that the Applicant's Marine Processes Supplementary Report and other information and clarifications submitted during the examination cumulatively represented a thorough evidence gathering exercise that demonstrated sufficient understanding of the baseline, and accepts the Applicant's predictions of direct and indirect impacts [ER 7.5.25]. The ExA notes that Professor Elliot's peer review advised that all reasonable scientific evidence has been provided [ER 7.5.26]. The ExA notes that the major outstanding concerns of the MMO and NE generally related to wakes, stratification and cumulative effects [ER 7.5.28]. The ExA notes the Applicant's contention that there would be no significant impact on stratification

in practice [ER 7.5.29], and the ExA considers that the Applicant's assessment has gone as far as possible, and that monitoring would be useful to establish the accuracy of the assumptions that had been made [ER 7.5.30]. The ExA notes that the monitoring proposed by NE and the MMO was more extensive than that proposed by the Applicant, but considers that the phased post-construction monitoring programme for three sample foundations put forward by the Applicant is a proportionate response and a good basis for the development of the monitoring regime in the final Marine Monitoring Plan, and notes that regulators would have further opportunity for influencing the monitoring of potential effects on the Flamborough Front via the Outline Marine Monitoring Plan [ER 7.5.31].

#### *Sediment sampling and analysis*

- 4.17 The ExA considered sediment sampling and analysis [ER 7.4.18 et seq.]. The ExA notes that at the close of the examination, the Applicant reported that samples had been re-analysed by a laboratory validated by the Marine Management Organisation ("MMO") for particle size analysis and that the results had been made available to the MMO, although given the timing, there was no realistic opportunity for the MMO to indicate whether it was content with the re-analysis before the Examination closed [ER 7.4.24].
- 4.18 The ExA was aware that the issue concerning the validation of the laboratory that undertook the sediment sample particle size analysis was not fully concluded by the end of the Examination, though the Applicant did report that a second analysis by a validated laboratory had been completed and the results reported to the MMO [ER 7.5.8]. Whilst the Applicant had updated the Outline Marine Monitoring Plan to restrict any sediment disposal activities until the MMO had approved the particle size analysis results, this fell short of the condition on the Deemed Marine Licences ("DML") that had been suggested by the MMO. As the MMO had no realistic opportunity to provide an opinion about the reanalysis, the ExA considered it necessary to secure this restriction on the face of the DMLs [ER 7.5.10] and therefore recommends the addition of a new condition at Part 2 of each of the two DMLs [ER 7.5.10]. The ExA considered this to be a reasonable and proportionate condition in the circumstances [ER 7.5.11].
- 4.19 The MMO also requested ongoing monitoring of samples of sediment from the proposed dredge and disposal area until construction activities were complete, with the suggestion being that this should take place every three or five years, depending on the results of the sediment sample analysis. The Applicant's view was that construction would last less than five years so such monitoring would be unnecessary [ER 7.4.32]. The matter was not immediately resolved, and the Applicant sought further information and justification from the MMO, but the MMO was unable to comment until the matters around the analysis of samples and accreditation of the laboratories had been resolved [ER 7.4.33]. The Applicant noted that there was no evidence here to suggest high levels of contaminants that might lead to significant concern and as such did not consider ongoing sampling of sediment to be necessary [ER 7.4.34].

- 4.20 The Applicant noted that no long-term impacts are predicted, any short-term impact would be localised, and the material to be disposed of would not be heavily contaminated. The ExA agreed with the Applicant's rationale and finds no reason to recommend any further monitoring in this respect [ER 7.5.13].

*Overall conclusions*

- 4.21 The ExA considered the impacts of the Proposed Development on matters relating to marine and coastal processes and sediments in the context of the relevant policy framework [ER 7.6.1].
- 4.22 To deal with a minor outstanding matter at the end of the examination, relating to validation of the laboratory that undertook the sediment sample particle size analysis, the ExA recommended the addition of a new condition to each of the two DML's sought through the draft Order to ensure the MMO is satisfied before work commences [ER 7.6.2]. However, the MMO confirmed on 12 January 2023, in response to the Secretary of State's letter of 16 December 2022, that it had now reviewed the updated sediment sampling analysis and there was no longer a need for a condition to be included within the DML for the samples to be re-analysed at a valid laboratory. The MMO noted that Ocean Ecology Ltd who conducted the analysis are validated by the MMO for particle size analysis. The Secretary of State has therefore not included the conditions recommended by the ExA in the Order.
- 4.23 In all other aspects the ExA finds the proposed mitigation, controls and monitoring would provide adequate safeguards to allow the Proposed Development to go ahead in accordance with adopted policy [ER 7.6.3]. The ExA notes that the process of discussing and approving final versions of the various management plans through the DML conditions in the recommended Order would provide further opportunity for the MMO and NE to influence the detail of many of the necessary mitigation and monitoring measures, including approval of the final Marine Monitoring Plan in relation to detailed surveys and cable burial risk assessment for Smithic Bank, and a phased monitoring programme for three sample gravity base structure foundations (if used) along the Flamborough Front [ER 7.6.4]. The ExA concludes that, given the difficulties associated with making precise impact predictions, combined with some minor residual adverse effects, matters relating to marine and coastal processes and sediments weigh against the case for the Proposed Development to a limited extent [ER 7.6.5].
- 4.24 The Secretary of State notes that on 16 May 2023 the Applicant confirmed that it would remove gravity base structures as a foundation type for WTGs in the design envelope for Hornsea Four and provided updates to the proposed monitoring scheme in the OMMP. In its response of 16 June 2023, NE welcomed the Applicant's commitment to remove the gravity base structures, which it advises will significantly reduce the risks of wake-related effects and enhanced turbulent mixing impacting upon the functioning of the Flamborough Front. NE also welcomed the proposed monitoring and broadly agreed with its content.
- 4.25 The Secretary of State considers that the removal of gravity base structures significantly reduces the risks of wake-related effects and turbulent mixing



impacts, and he welcomes the proposed scheme of monitoring. He agrees with the ExA's conclusions on this matter.

### Marine and Coastal Ornithology

- 4.26 The ExA notes policy relevant to the consideration of marine and coastal ornithology, as set out at paragraph 4.12 above.
- 4.27 The RSPB and NE raised concerns in relation to the assessment methodology adopted by the Applicant [ER 8.4.3 et seq., ER 8.4.18 et seq., ER 8.4.20, ER 8.4.26 et seq.]. NE concurred with the Applicant's position that there would be no likely significant effects arising from the Proposed Development alone, but it concluded that significant adverse cumulative effects could not be ruled out for a number of species [ER 8.4.182]. The ExA sympathises with the view expressed by NE that the ES should have been reworked or more clearly amended to incorporate the revised baseline, but notes that it also recognises the practical difficulties associated with that course of action so late in the Examination [ER 8.5.4]. The ExA notes that in its consideration of marine ornithological matters, it has taken all of the baseline characterisation information and subsequent representations from IPs into account, but has based its recommendation on the updated baseline that was ultimately accepted as adequate by NE and the RSPB, rather than the original baseline as set out in the application ES [ER 8.5.6].

### *Overall conclusion*

- 4.28 The ExA has considered the effects of the Proposed Development on marine and coastal ornithology in the context of the relevant policy framework [ER 8.6.1] and is content that the ES addresses the relevant types of impact listed in NPS EN-3 paragraph 2.6.101 and that its recommendations on assessment and mitigation have been properly considered by the Applicant [ER 8.6.2].
- 4.29 The ExA is unconvinced by the Applicant's rationale for varying from the Statutory Nature Conservation Bodies ("SNCB") advocated standard approach to offshore ornithological assessment modelling, and considers the evidence base on which the Applicant based its alternatives to be less compelling for such a major variation from the guidance and recommended best practice [ER 8.6.4]. The ExA has generally placed greater reliance on the SNCB standard and bespoke project assessments provided by NE, and as a result does not agree with the Applicant's findings of no likely significant effect on offshore ornithological receptors for the Proposed Development [ER 8.6.5].
- 4.30 The ExA concludes that there will be no significant adverse effects on marine or coastal birds as a result of the Proposed Development alone, but considers there to be a likelihood of significant adverse effects for kittiwake, guillemot and great black backed gull when the impacts of the Proposed Development are considered alongside those of the consented offshore wind farms used in the ES cumulative assessment [ER 8.6.6]. The ExA considers that this weighs heavily against the case for the Proposed Development [ER 8.6.7].
- 4.31 The Secretary of State notes that he requested updated assessments and that additional mitigation was proposed in response to the consultation letters.

Whilst these could reduce impacts on some bird species of protected sites (under the Habitats Regulations, see the Secretary of States Habitats Regulations Assessment), this has not been reconsidered or quantified in EIA terms in the ES cumulative assessment. Therefore, he agrees with the ExA's conclusions on this matter.

### Marine Ecology

- 4.32 The ExA notes relevant policy considerations for marine ecology matters, as noted at paragraph 4.12 above.
- 4.33 The ExA notes that most of the matters raised by the MMO, NE the National Federation of Fishermen's Organisations and the Holderness Fishing Industry Group were satisfactorily addressed by the Applicant during the examination, whilst mutually acceptable compromises were reached for others [ER 9.5.1]. The ExA notes that several of the outstanding matters relate to controls and conditions associated with the DMLs that the Applicant is seeking through the Order [ER 9.5.3].
- 4.34 The ExA notes that matters raised in relation to the characterisation and valuation of marine benthic biotopes, including those associated with the echinoderm *Amphiura filiformis* and the polychaete *Sabellaria spinulosa*, have been satisfactorily addressed by the Applicant through provision of further information and assessment [ER 9.5.5]. The ExA accepts the Applicant's contention that whilst *Sabellaria spinulosa* was recorded in some samples, it was present as individuals rather than aggregations and as such Annex I reef was not identified, and notes that this was not directly challenged by NE though caution and reconsideration were recommended [ER 9.5.5].
- 4.35 With regard to underwater marine noise and impacts on fish, the ExA notes that despite the range of relevant published research and data referred to, differences in interpretation between the Applicant and the MMO remained [ER 9.5.10]. The ExA notes that the differences between the Applicant and the MMO narrowed during the course of the examination [ER 9.5.11]. The ExA considers that the restriction proposed for Work No.3 in the Order (as suggested by the Applicant) is justified [ER 9.5.14] and that it would be disproportionate to add further delays to the construction programme of important parts of the Proposed Development [ER 9.5.15]. With this restriction in place, the ExA does not consider the likely effects on spawning herring to present a significant risk in an EIA context to important predators, including cetaceans and seabirds [ER 9.5.16].
- 4.36 With regard to sediment release from construction activities, the ExA notes that the export cable corridor would cross the Banks herring spawning ground [ER 9.5.17] and the view of the MMO that installation activities could result in direct damage to - and smothering of - the gravel beds on which herring lay their eggs [ER 9.5.18]. With the amendments made by the Applicant during the Examination, the ExA is content that sufficient controls would be available to the MMO through its approval of the final Cable Specification and Installation and Marine Monitoring Plans to ensure proportionate mitigation for effects on spawning grounds from sediment release and resettlement, and cumulatively with noise disturbance [ER 9.5.19].

- 4.37 In terms of marine Electro Magnetic Fields (“EMF”), the ExA has considered the laboratory research findings highlighted during the Examination by NE, the MMO, and the HFIG that demonstrated behavioural and physiological responses by some crab species subjected to EMFs [ER 9.5.20], and is content with the Applicant’s conclusion that such impacts were most unlikely to be experienced in practice, and that post-construction monitoring would not be proportionate [ER 9.5.21].
- 4.38 The ExA considered the matter of marine mammals and underwater noise [ER 9.5.22 et seq.], and the ExA notes that the disagreement between the Applicant and the MMO and NE on the appropriate level of detail that should be included in the outline mitigation plans for at-source, underwater noise reduction measures was largely overcome during the examination [ER 9.5.25]. The ExA is content that appropriate, at-source noise reduction measures can be successfully secured in this way. [ER 9.5.26]. The ExA notes that the Applicant has chosen to deal separately with licensing for any UXO clearance, and further notes that this approach has been adopted for several previous projects, whereas others have chosen to include the relevant consent in the Order; ultimately, the ExA is content that the matter can be dealt with effectively either way [ER 9.5.27]. The ExA concludes that, notwithstanding the very low level of probability that a high-order method of clearance would be necessary and that there would be other sources of noise that could act cumulatively, the Applicant has demonstrated that the Proposed Development alone would not lead to adverse impacts, and that any potential cumulative effects could be mitigated through the Marine Mammal Mitigation Protocol and Southern North Sea Site Integrity Plan that would be secured through the Order [ER 9.5.28].

#### *Overall conclusions*

- 4.39 The ExA considered the impacts of the Proposed Development on marine ecology matters in the context of the relevant policy framework [ER 9.6.1]. The ExA is content that paragraph 2.6.113 of EN-3 related to the effects on the subtidal environment from habitat loss due to predicted scour, scour protection and altered sedimentary processes has been addressed as a result of amendments made during the examination, along with those paragraphs in EN-3 (2.6.72 to 2.6.77) related to fish and shellfish, as well as those paragraphs (2.6.90 to 2.6.99) related to marine mammals [ER 9.6.2].
- 4.40 The ExA considers that the Applicant’s amended approach provides a proportionate mitigation response to the potential for underwater construction noise and the resettlement of suspended sediment to adversely affect spawn herring, but that as a small residual risk of damage or disturbance would remain, this is considered to weigh against the case for the Proposed Development to a limited extent [ER 9.6.3].
- 4.41 In all other aspects, the ExA finds that the mitigation and controls that would be put in place would provide sufficient safeguards to allow the Proposed Development to go ahead in accordance with adopted policy relating to marine ecology matters [ER 9.6.4].
- 4.42 The Secretary of State notes that NE and the MMO did not agree with the Applicant’s proposed monitoring of the effect of gravity base structures on

benthic communities. In light of the removal of gravity base structures from the MDS, he considers this matter to be resolved.

4.43 The Secretary of State agrees with the ExA's conclusions on this matter.

#### The Endurance Store

4.44 The Endurance Store is a saline aquifer, part of which overlaps with the northern part of the proposed array area ("the Endurance Store") [ER 10.1.1.]. The Northern Endurance Partnership ("NEP") which is operated by BP Exploration Operating Company Limited ("bp") proposes to use the Endurance Store for the storage of carbon dioxide (the project is called the Endurance Store Project ("ESP")). There is an area of overlap between the Proposed Development and the Endurance Store ("the Overlap Zone") [ER 10.1.4].

4.45 The ExA recommended that, should the Secretary of State be minded to grant development consent for the Proposed Development, that the Secretary of State should consult with the relevant parties over an alternative form of drafting for the protective provisions for the benefit of the Carbon Storage Licensee that would deliver these outcomes [ER 10.9.3].

4.46 On 18 June 2023, the Applicant confirmed that it had signed a commercial agreement with bp and that bp had subsequently withdrawn its objection. The objection withdrawal letter provided confirmed that both parties agree that there are no requirements for protective provisions under the Hornsea Four Order for the benefit of bp or any other party involved in the NEP project, and that bp has no remaining objection to the Application and agrees to withdraw any and all prior representations made in relation to the Application. The Secretary of State therefore considers that no such protective provisions for the benefit of bp are required.

#### Other Marine Planning Issues

4.47 The ExA considered policy and legislation relevant to marine planning issues, including NPS EN-1, NPS EN-3, NPS EN-5, the MCAA, the MPS, and the East Inshore and East Offshore Marine Plans ("EIEOMP") [ER 11.1.1 et seq.].

#### *Aviation and radar*

4.48 The ExA concludes that impacts on military aviation, as well as civilian and military radar operations which were identified by IPs could be mitigated through measures secured by Schedules and Requirements in the final draft DCO. The ExA also concludes that the impacts of the Proposed Development on the safe access to platforms currently available to oil and gas operators within, or with close proximity to, the Order limits can be mitigated through protective provisions inserted into the recommended Order. The Secretary of State's consideration of the drafting of the protective provisions relevant to this issue is provided in detail at paragraphs 4.73 to 4.101. The ExA therefore concludes that aviation and radar matters would not weigh against the case for the Proposed Development [ER 11.2.78].

- 4.49 Noting the consideration of the relevant protective provisions, which is provided at paragraphs 4.73 to 4.101, the Secretary of State agrees with the ExA's conclusion on this matter.

*Commercial fisheries and fishing*

- 4.50 The ExA notes the policy tests relevant to commercial fisheries and fishing in NPS EN-1, the MCAA, the EIEOMP [ER 11.3.1 et seq.] and the Safety of Life at Sea Convention Chapter V (Safety of Navigation) 1974 (as amended) and the Infrastructure Planning (Decisions) Regulations 2010 [ER 11.3.6 et seq.].
- 4.51 The ExA is satisfied that the Applicant has had due regard to NPS EN-3 and the relevant Marine Plan policies which require proposals to demonstrate that, if adverse impacts resulting in displacement cannot be minimised, how adverse impacts would be mitigated [ER 11.3.24]. All matters of concern to the Holderness Fishing Industry Group and the National Federation of Fishermen's Organisations were reported as resolved in the final signed SoCG [ER 11.3.25]. The ExA is therefore satisfied that all IP concerns regarding the assessment of impacts on UK potting activity were resolved at the end of the examination and that there were no matters regarding commercial fishing and fisheries outstanding, other than related matters of fish and shellfish ecology, which are dealt with in Chapter 9 of the ExA report [ER 11.3.25] and in the marine ecology section of this letter above.
- 4.52 The ExA concludes that the relevant policy tests have been satisfied and that: impacts of the Proposed Development alone on Commercial Fisheries and Fishing would be no more than 'slight adverse' after mitigation; together with other developments, the cumulative and transboundary effects from the impact of reduction in access to or exclusion from fishing grounds during construction, operation and decommissioning phases for UK, Dutch, Danish, French, German and Belgian demersal trawling fleets would be 'moderate adverse'. The ExA notes and agrees with the Applicant's contention that the adverse impact of other developments on this demersal trawl fishery would remain significant regardless of any additional impact from the Proposed Development; inter-related effects after mitigation would be of no greater significance than effects assessed in isolation. It further notes that the cumulative effect of reduction in access to or exclusion from fishing grounds for the UK potting fishery is assessed as 'moderate adverse' during the construction and decommissioning phases, and that effect can be adequately mitigated through 'justifiable disturbance payments' to the potting fishery which would be secured by the FCLP as a condition of the Deemed Marine Licences under the Applicant's final draft Order [ER 11.3.28].
- 4.53 The ExA notes the likelihood of 'moderate adverse' residual cumulative transboundary effects from the Proposed Development for UK, Dutch, Danish, French, German and Belgian demersal trawling fleets during construction, operation and decommissioning, and of 'moderate adverse' residual impact to the UK potting fleet during construction and decommissioning. The ExA attributes limited negative weight to these impacts on commercial fisheries and fishing.

- 4.54 The Secretary of State agrees that impacts on commercial fisheries and fishing should be attributed limited negative weight against the Order being made.

*Offshore historic environment (marine archaeology)*

- 4.55 The ExA notes relevant policy considerations for the offshore historic environment and marine archaeology [ER 11.4.1 et seq.].
- 4.56 The ExA notes that at the end of the examination, the Applicant submitted final signed SoCGs with Historic England (“HE”) and ERYC. All matters were agreed with ERYC (subject to agreement post-consent of a Written Scheme of Investigation (“WSI”)). A number of matters regarding marine archaeology were not agreed between HE and the Applicant, the ExA notes that these disagreements were essentially semantic in nature and were marked as ‘of no material impact’ [ER 11.4.26].
- 4.57 The ExA is satisfied that all IP concerns raised during the examination were satisfactorily answered and that the Marine WSI would be secured by the Applicant’s final draft Order [ER 11.4.27]. The ExA considers that the policy requirements with regard to marine archaeology in NPS EN-1, EN-3 and the relevant marine plans have been met [11.4.28] and that relevant policy in the EIEOMP has been complied with [ER 11.4.29]. The ExA concludes that the impacts of the Proposed Development alone on marine archaeology receptors would be likely to be of no more than ‘slight significance’ after mitigation secured by the Applicant’s final draft Order, no significant effects on historic seascape would be likely for the offshore elements of the Proposed Development alone or cumulatively, and the Proposed Development has the potential to generate a positive effect of enhanced public understanding of the archaeological significance of submerged landscapes and of marine archaeological assets in the Southern North Sea due to archaeological investigation and dissemination of results and interpretation as secured by the Applicant’s final draft Order [ER 11.4.34]. The ExA notes the residual risk of adverse effects to as-yet unknown archaeological receptors during construction and decommissioning, and the potential benefit that could arise from the public dissemination of archaeological investigation, and concludes that matters in relation to the offshore historic environment would not weigh against the case for the Proposed Development [ER 11.4.35].
- 4.58 The Secretary of State agrees with the ExA’s conclusions and ascribes this matter neutral weight in the planning balance.

*Other offshore infrastructure*

- 4.59 The ExA considers that policy requirements within NPS EN-3, the MPS and the EIEOMP relevant to other offshore infrastructure have been met [ER 11.5.56]. The ExA is satisfied that mitigation measures have been identified to negate or reduce effects on oil and gas exploration, production and general safe operations to the level where there would be no significant adverse effects and, as such, either alone or cumulatively, this would not weigh against the case for the Proposed Development [ER 11.5.57]. The ExA considers that there would be no significant adverse effects on existing or proposed subsea cables and

this would not weigh against the case for the Proposed Development in relation to other offshore infrastructure matters.

- 4.60 The Secretary of State agrees with the ExA's conclusions and ascribes this matter neutral weight in the planning balance.

*Shipping and marine navigation*

- 4.61 The ExA notes that NPS EN-3 requires applicants to engage with maritime stakeholders and to undertake a Navigational Risk Assessment in consultation with them [ER 11.6.1], and notes other relevant policy and legislation [ER 11.6.2 et seq.].
- 4.62 The MMO confirmed that the proposed Order limits would lie entirely within the EIEOMP area and that the Applicant's demonstration of compliance with policies related to shipping and navigation was satisfactory [ER 11.6.26]. The UK Chamber of Shipping ("UKCoS") and Maritime and Coastguard Agency ("MCA") were satisfied with the consultation undertaken by the Applicant [ER 11.6.28].
- 4.63 With regard to marine navigation effects in relation to other infrastructure, NEO Energy (SNS) Limited ("NEO") submitted that there "could be significant shipping and navigation impacts" and proposed protective provisions in the Order to safeguard its position [ER 11.6.27]. The Applicant maintained that the effect of shipping route deviations as a result of the proposed Development "does not equate to a need for any live monitoring equipment or aids to navigation if these were not required previously" [ER 11.6.27].
- 4.64 At the end of the Examination, signed SoCGs with the MCA and Trinity House were submitted with all matters in relation to shipping and navigation marked as agreed, and it was agreed that project-alone and cumulative impacts would be unlikely to be significant in EIA terms and that risks would be As Low As Reasonably Possible ("ALARP") on the understanding that appropriate navigation measures were implemented [ER 11.6.37]. A signed SoCG with the UK Chamber of Shipping ("UKCoS") was submitted, and the UKCoS confirmed that it considered impacts after proposed mitigation to be tolerable both in isolation and cumulatively, but it reserved final agreement as to whether they would be ALARP after proposed mitigation [ER 11.6.37].
- 4.65 The ExA considers that policy requirements with regard to shipping and navigation in NPS EN-1 and EN-3 have been satisfied [ER 11.6.38], that the Applicant has had due regard to the relevant policies in the MCAA, and that relevant policy in the EIEOMP has been complied with [ER 11.6.39].
- 4.66 The ExA agreed with the Applicant's conclusions that: because of the distance of the Proposed Development offshore, there would not be any direct impact on port operations [ER 11.6.40]; that a transboundary commercial effect of displacement of vessel routing, including consideration of effects on ports, as not significant [ER 11.6.41]; and that the increase in navigation risk associated with deviation of shipping main routes both alone and cumulatively would be 'slight' [ER 11.6.46]. With regards to the concerns expressed by NEO, the ExA has had regard to the Applicant's commitments to undertake vessel traffic

monitoring during and after construction and notes that the MCA and Trinity House would be necessarily consulted as a condition of the marine licences on the potential need for additional risk controls if a discrepancy were to be identified between predicted and actual vessel traffic [ER 11.6.47]. The ExA considers that it would not be unreasonably prejudicial to the Applicant's interests if the Secretary of State were to include in the Order as made protective provisions proposed by NEO relating to additional aids to navigation and service of notice if an impact to shipping and navigation were considered to have occurred [ER 11.6.48]. The Secretary of State agrees with the ExA's final conclusions in relation to aids to navigation, that Schedules 11 and 12 in the draft Order provide sufficient protection to mariners [ER 16.8.27 et seq.]. The Secretary of State considers the matter of aviation corridors in more detail at paragraphs 4.73 to 4.101 below.

- 4.67 The ExA is satisfied that at the end of the Examination there were no outstanding disagreements from IPs in respect of shipping or marine navigation matters, with the exception of bp in relation to the Endurance Store Project [ER 11.6.53]. As noted in paragraphs 4.44 to 4.46 above since the close of Examination confirmation has been received from the Applicant and bp that agreement has been reached between them in relation to outstanding matters. Issues related to the protective provisions for the benefit of NEO is set out in paragraphs 4.82 to 4.87 below. The ExA considers that shipping and marine navigation matters would not weigh against the case for the Proposed Development [ER 11.6.54].
- 4.68 Noting the Secretary of State's consideration of relevant protective provisions at the end of this section of this letter, the Secretary of State agrees with the ExA's conclusions on this matter.

#### *Seascape and visual impact assessment*

- 4.69 The ExA considered the relevant policy in NPS EN-1, NPS EN-3, the MPS, the NPPF, and the relevant Local Plan [ER 11.7.1 et seq.].
- 4.70 The Applicant's assessment of the potential impact of the Proposed Development on seascape and visual resources was primarily set out in ES Chapter 10 [ER 11.7.8]. A RR was received from NE which indicated that it did not have concerns regarding the potential impact of the Proposed Development with regard to the effects of lighting to offshore structures and that the Proposed Development would not have the potential to impact on the special character of the Flamborough Head Heritage Coast and its seascape setting [ER 11.7.9].
- 4.71 The ExA considers that the relevant policy requirements in NPS EN-1 and EN-3 have been met [ER 11.7.11], and that as a result of consultation and assessment work the ExA considers that the Proposed Development would be in compliance with local plan policy relating to seascape and visual resources [ER 11.7.12]. The ExA concludes that the overall effects on seascape and visual resources alone and cumulatively would not weigh against the case for the Proposed Development [ER 11.7.13].
- 4.72 The Secretary of State agrees with the ExA's conclusions.



### *Marine Planning Issues and Protective Provisions*

- 4.73 The ExA notes that concerns were raised by Bridge Petroleum 2 Limited (“Bridge”), NEO Energy (SNS) Limited (“NEO”), Harbour Energy (“Harbour”) and Perenco UK Limited (“Perenco”) in connection with future development including potential reuse for carbon capture and storage, maximising economic recovery, and decommissioning [ER 11.5.38]. The ExA notes that all of those concerns relate to how the operators would access their fields by helicopter and ship to undertake these activities [ER 11.5.39].

#### *Bridge – Kumatage Field*

- 4.74 Bridge was supportive of the Proposed Development, but wanted it designed in a way that would not hinder, compromise or adversely affect its future activities in the Kumatage Field [ER 16.5.11]. At the end of the Examination, Bridge’s objection to the drafting of the protective provisions for its benefit remained outstanding [ER 16.5.21].
- 4.75 The Secretary of State requested an update from the Applicant and Bridge in relation to the position on the drafting of the protective provisions. The Applicant’s response noted that the protective provisions are no longer required as the Licence P2426 has been relinquished by Bridge and the licence block has not yet been re-awarded. Bridge’s response confirmed that it had relinquished Licence P2426 but intended to re-apply for the licence blocks in the 33<sup>rd</sup> Licensing Round. However, Bridge considers that protective provisions are still required, in particular to provide for a 1 nautical mile protected area around each of the Kumatage proposed drill centres to give adequate provision for all marine and aviation operations through development life and to give greater freedom to the Kumatage owners to select a gas export pipeline route.
- 4.76 On 3 March 2023, the Secretary of State requested information from Bridge, including a full draft of its proposed protective provisions which stipulate a specified timeframe that it would find acceptable for committing to the proposed location of its pipeline, with clear reasoning and justification for the timeframe proposed. Bridge was also asked to confirm expected timescales for the re-application for and grant of the relevant licence, and was asked to inform the Secretary of State going forward of any updates with regard to its application for the licence. The Secretary of State also asked the Applicant to confirm the possible impact of these protective provisions on the layout of the proposed array and the number of turbines.
- 4.77 In response, Bridge stated that, following their 33<sup>rd</sup> Offshore Licensing Round interview held with NSTA on the 23 March 2023, they anticipate that the final commitment to the location of the pipeline will be identified shortly before the project’s Final Investment Decision, likely to occur in Q2 2026. Bridge have re-applied for the licence and expect to be awarded the licence before the end of Q3 2023. The Applicant has advised that 7 turbines would be affected by the protective provisions submitted by Bridge and has noted that this will result in an increased wake loss effect.
- 4.78 The Secretary of State has noted the representations made by the Applicant but considers that protective provisions are necessary to protect the relevant

licence from time to time and considers that the protective provisions recommended by the ExA are appropriate.

- 4.79 The Secretary of State, having considered the ExA's recommendation and the subsequent information provided in relation to the relevant requests for information, agrees with ExA's recommendation that paragraph 4(2) of the protective provisions should include a requirement to seek the written agreement of the licensee for the undertaking of activities within the protected area.
- 4.80 With regard to the Applicant's proposed timeframe of three months within paragraph 2 of the protective provisions recommended by the ExA, the Secretary of State considers that this timeframe should be extended to 1 January 2026, noting the timings set out by Bridge as detailed in paragraph 4.77 above. With regards to paragraph 5 of the protective provisions recommended by the ExA, the Secretary of State considers that this period should be six months, to ensure that the Applicant has some certainty around its array layout, which it has advised it is required to finalise by 30 September 2024, but to allow some time after the closing of the 33<sup>rd</sup> Offshore Licensing Round. The Secretary of State has also limited the protective provisions such that should the licence not be granted in the 33<sup>rd</sup> licencing round, then the protective provisions will fall away.
- 4.81 The Secretary of State, in concluding the above, has noted the speculative nature of Bridge's proposals and the lack of certainty in relation to 33<sup>rd</sup> Offshore Licencing Round.

*NEO – The Babbage Field*

- 4.82 NEO did not object to the principle of the development, but considered that the Proposed Development might prejudice future development including decommissioning which would prevent NEO from meeting its central obligation under the Oil and Gas Authority Strategy. To address this, NEO sought protective provisions in the Order to avoid an adverse impact and serious detriment to NEO's future operations. [ER 11.2.38]. At the end of the Examination, NEO's objection remained outstanding [ER 11.2.47]. The ExA recommended that the 'restricted area' in the protective provisions should be amended to have a radius of 3.14 nautical miles from the centre of the existing Babbage Platform to address NEO's concerns [ER 16.8.33]. The ExA considers that this would enable safe helicopter access [ER 11.2.71].
- 4.83 The ExA noted that alternatively, the Secretary of State might wish to consult with the relevant parties as to whether or not they could agree an alternative form of drafting which would secure the use of alternative helicopters and compensate for any additional costs thereby reducing the 'restricted area' [ER 16.8.34]. On 16 December 2022, the Secretary of State issued a letter requesting an update on the position of the protective provisions and confirmation as to whether protective provisions have been agreed regarding the use of helicopters and compensation for any additional costs.
- 4.84 The Applicant's response noted that the position of the parties remained unchanged from that at the end of the Examination, and noted that the

Applicant remains confident that a distance of 2.7 nautical miles from the Babbage Platform to the tip of the nearest turbine allows NEO to undertake safe helicopter operations. NEO's response noted that the Applicant's draft protective provisions would result in serious detriment to NEO's undertaking and on NEO's ability to operate the Babbage Field in a safe and efficient manner. NEO noted that its draft protective provisions should be preferred because they avoid serious detriment to its undertaking by allowing for helicopter payload to be maintained by establishing a 3.14 nautical mile restricted area, amongst other proposed changes to the protective provisions.

- 4.85 On 3 March 2023, the Secretary of State requested that the Applicant and the NEO confirm the correct coordinates to be included in the definition of the "restricted area" in the protective provisions. The Secretary of State also asked the Applicant to confirm the possible impact of these protective provisions on the layout of the proposed array and the number of turbines.
- 4.86 In response, NEO provided the coordinates of the Babbage platform as follows: 383265 Easting, 5981086 Northing, with that point being the centre of the existing Babbage platform. The Applicant has advised that 4 turbines in total would be affected by the protective provisions proposed by NEO, which would have an impact on the complexity of the construction and would increase the wake losses.
- 4.87 The Secretary of State, having considered the ExA's recommendation and the subsequent information provided in response to the relevant requests for information agrees with the ExA that there should be a restricted area of 3.14 nautical miles to ensure safe helicopter operations as included in the protective provisions in favour of NEO contained in the recommended Order.

*Harbour – Johnston Field*

- 4.88 Harbour owns and operates the Johnston Field, and was concerned that the Proposed Development could impact the safe decommissioning of the field facilities at the end of field life [ER 11.2.48]. Harbour and the Applicant disagreed over the drafting of the protective provisions for the benefit of Harbour, with Harbour advising that the Applicant's protective provisions would make it impossible for the Johnston Field operations to co-exist with the Proposed Development [ER 11.2.55] and to address this Harbour advocated for a 3 nautical mile radius around each wellhead or alternatively the Applicant's protective provisions would need to be amended to permit sufficient space for helicopter access and include a mechanism to compensate Harbour for delays to its rig programmes [ER 11.2.56].
- 4.89 The ExA considered that protective provisions for the benefit of Harbour should be amended to enable safe helicopter access [ER 11.2.71]. Further, the ExA noted that it was not satisfied that the aviation access corridor of 800m as proposed by the Applicant would enable safe aviation access to the Johnston Field, and considers that a corridor of 1000m as requested by Harbour would address its concerns [ER 16.8.49]. As noted above, Harbour consider a radius of 3 nautical miles around each wellhead would be required to ensure safe access, and the ExA considers that, whilst noting it could result in a sub optimal layout for the Proposed Development, that the Wind Turbine Generator

exclusion zone in the protective provisions should be increased to 3 nautical miles to ensure safe access [ER 16.8.50]. The ExA considers that these distances would be necessary to ensure aviation safety regardless of whether the activities related to decommissioning or the continued operation of the wells [ER 16.8.52].

- 4.90 As with NEO, the ExA noted that alternatively, the Secretary of State might wish to consult with the relevant parties as to whether or not they can agree an alternative form of drafting which would secure the use of alternative helicopters and compensate for any additional costs [ER 16.8.51]. On 16 December 2022, the Secretary of State issued a letter requesting an update on the position of the protective provisions and confirmation as to whether protective provisions have been agreed regarding the use of helicopters and compensation for any additional costs.
- 4.91 The Applicant noted that the position of the parties remained unchanged from that at the end of the Examination. Harbour's response noted that the Applicant's proposed protective provisions would preclude aviation operations to and from the Johnston field such that decommissioning would not be possible once the windfarm is constructed. Harbour provided five aviation solutions to facilitate coexistence in order of its preference, with its preferred option being no wind turbine generator or rotor placed within 5.6km (3 nautical miles) of the Johnston Wellheads until after the Johnston Field has been decommissioned.<sup>1</sup>
- 4.92 On 3 March 2023, the Secretary of State asked the Civil Aviation Authority to provide any update or further information as to when it expects any new guidance to be published. The Secretary of State also asked the Applicant to confirm the possible impact of the different protective provisions proposed by Harbour on the layout of the proposed array and the number of turbines.
- 4.93 In response, the Civil Aviation Authority stated that they are engaging with the aviation industry and its associates who are working on safety initiatives to consider potential improvements to regulatory requirements and guidance material for offshore operations. However, the CAA also note that it does not have a planned date for proposing the changes to CAP764 policy, as any such update is likely to be associated with changes to the Air Operations Regulation and will require legislative proposals through UK Parliament.
- 4.94 With regard to the impact of the protective provisions on the proposed array layout and number of turbines, the Applicant set out five possible scenarios based on the different options put forward by Harbour, with impacts on turbine positions ranging in number from 9 to 44. The Secretary of State notes the Applicant's submission that protective provisions drafted in accordance with Harbour's submission at deadline 8 [REP8-026] would have some impacts on the proposed array layout and number of turbines, but that this would not result in a substantial reduction in the capacity of the wind farm, in contrast with the

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<sup>1</sup> Harbour Energy's response detailing the five options can be found here: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010098/EN010098-002241-Harbour%20Energy%20-%20Response%20to%20SoS%20request%20for%20information%2013%20Jan%202023.pdf>

other options put forward by Harbour after the close of the examination. Harbour's deadline 8 submission advises that, were the protective provisions amended to permit sufficient space, i.e. a 1.6km obstacle free radius around each wellhead and 1.4km wide aviation corridors to and from each wellhead, then subject to the Applicant compensating for delays to rig programmes arising from flight restrictions resulting from the presence of the windfarm, such protective provisions could be acceptable to Harbour Energy. Harbour's additional submission [AS-049] advises that, given the limited times during which simultaneous operations will be required, the Applicant could lock some wind turbine generators to increase the available airspace to provide the minima set out above.

- 4.95 On 27 April 2023, the Secretary of State asked the Applicant and Harbour Energy to provide an agreed set of protective provisions, or alternatively to each provide draft protective provisions to address the scenario referred to by the Applicant as 'scenario 4' and Harbour's examination protective provisions. The Applicant and Harbour were unable to agree and therefore could not provide an agreed set of protective provisions in response to this request.
- 4.96 The Applicant submitted a set of protective provisions to address scenario 4 with a mechanism for payment of additional costs included, without prejudice to its position. The Applicant maintained its position on the requirement for and the merits of the protective provisions it submitted at deadline 7. The Applicant maintained that there would be minimal commercial impact on Harbour Energy's operations and that it would not prevent or significantly delay the decommissioning of the Johnston production wells.
- 4.97 Harbour Energy prepared a set of protective provisions also, and noted that in its conversations with the Applicant, the Applicant was unwilling to progress agreement of a compensation mechanism, and that were the protective provisions applied without any compensation, the Johnston owners would face significant additional costs with decommissioning and abandonment costs being 130% to 150% of those originally anticipated.
- 4.98 The Secretary of State has considered both sets of protective provisions and concludes that the drafting provided by the Applicant is appropriate to provide a compensation mechanism as necessary and has therefore included these in the Order. Noting that both the Applicant's protective provisions and Harbour's protective provisions make reference to an area of 1400m within the definition of the aviation corridor, the Secretary of State considers a 1400m aviation corridor to be appropriate and necessary. The Secretary of State understands, from the Applicant's response to the 3 March 2023 information request, that these protective provisions will impact 9 turbine positions and will result in a loss of 11.7km<sup>2</sup> of the area for the Proposed Development, and would result in increased wake losses. However, the Secretary of State notes that this information together with the Applicant's submission to the 3 March 2023 information request confirms that the application of these protective provisions along with those for the benefit of NEO and Bridge would not render the Proposed Development unviable, although collectively there would be increased wake losses, increased construction complexity and substantial reduction in windfarm capacity.

*Perenco -*

- 4.99 The ExA notes that the protective provisions related for Perenco are no longer required in light of the joint notification letter from Perenco and the Applicant, and therefore the ExA recommends that the provisions are not included in the Order [ER 16.8.36 et seq.]. The Secretary of State agrees.

*Dogger Bank Creyke Beck*

- 4.100 The Secretary of State notes that Schedule 13 to the draft Order provides for amendments to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 for the benefit of the Applicant. The Secretary of State agrees with the ExA and the Applicant that section 120(5) of the 2008 Act does provide an appropriate mechanism for a new Development Consent Order to amend an existing Development Consent Order and that the provisions in article 46 and Schedule 13 are necessary and expedient as they will ensure that the Proposed Development can be constructed, operated and maintained without impediment.

*Conclusions on the above protective provisions matters*

- 4.101 The Secretary of State notes the considerable amount of further information provided in relation to protective provisions after the close of the examination, in response to information requests from the Secretary of State. The Secretary of State notes that, the combination of the protective provisions for NEO, Bridge and Harbour that have been inserted into the Order will result in a reduced developable area and will impact on the number of turbine positions, but considers that the protective provisions as drafted are appropriate and necessary and notes the Applicant's submission to the 3 March 2023 information request which states that this combination of protective provisions would not render the Proposed Development unviable. The Secretary of State is of the view that this provides a reasonable solution to the competing interests of the operations in this area and the relevant safety concerns of accessing infrastructure. The Secretary of State attributes these matters neutral weight in the overall planning balance.

*Overall conclusions*

- 4.102 The ExA is satisfied that there has been a thorough consideration through the Examination of the principal and other marine planning matters [ER 11.8.1]. The Secretary of State agrees and further notes his thorough consideration of protective provisions for the benefit of NEO, Bridge and Harbour Energy.

Onshore Planning Issues

- 4.103 The ExA notes relevant policy and legislation for onshore planning issues, including NPS EN-1, EN-3, EN-5, the East Riding Local Plan Strategy Document (April 2016) (the Local Plan) and Allocations Document (July 2016) [ER 12.1.1 et seq.].

*Landscape and visual matters including good design*

- 4.104 The ExA notes relevant policy considerations for landscape and visual matters and good design, including NPS EN01, EN-3 and EN-5, the NPPF, and the Local Plan [ER 12.2.1 et seq.].
- 4.105 The Applicant's assessment of the Proposed Development's potential impacts on landscape and visual amenity receptors is set out in Chapter 4 of the ES, which considers the potential impact of the Proposed Development landward of Mean low Water Springs during construction, operation, maintenance and decommissioning [ER 12.2.9]. The Applicant's Landscape and Visual Impact Assessment considered the potential effects of the Proposed Development on the landscape as a resource and views and visual amenity as experienced by people [ER 12.2.10]. Embedded design mitigation for the OnSS and the EBI was described in Chapter 13 of the ES, with the Applicant intending that this will inform the detailed design [ER 12.2.12]. The Design Vision Statement provides a visual representation of how the Applicant proposed that project mitigation, further enhancement, and net gain may interact [ER 12.2.13].
- 4.106 RRs were received concerning landscape and visual impact issues [ER 12.2.15]. The ExA notes that ERYC's LIR briefly touched on the issue of landscape and visual impact; the ExA states it has given due regard to the points in the LIR [ER 12.2.16], and the Applicant noted the points raised in the LIR in its Responses to the LIR document [ER 12.2.17].
- 4.107 With regard to the replacement and maintenance of landscape and planting, the ExA is satisfied that the Order, with the inclusion of updated wording to Requirement 9 of the draft, makes adequate provision for new and replacement landscape and planting and its maintenance [ER 12.2.48].
- 4.108 With regard to the effectiveness of landscape mitigation against visual impact, the ExA notes ERYC's view that the Applicant should amend its landscaping proposals to provide increased landscape mitigation along the northern boundary of the OnSS site [ER 12.2.50]. Whilst the ExA agrees with the Applicant that it would not be possible to screen the OnSS and EBI buildings fully with landscape and planting alone, the ExA is unconvinced by the evidence provided to demonstrate significantly reduced landscape and visual effects from the OnSS buildings at year 30, particularly from viewpoints 1 to 4 [ER 12.2.51].
- 4.109 In considering the Applicant's design solution for the OnSS and EBI buildings, the ExA is mindful of the criteria for good design set out in NPS EN-1 [ER 12.2.52]. The ExA notes that the design of the OnSS and EBI has been heavily constrained by technical and health and safety considerations. However, whilst NPS EN-1 section 4.5.3 notes that applicants may not have any or very limited choice in the physical appearance of some energy infrastructure, the ExA is not of the view that this applies to the design and use of materials related to the OnSS and EBI buildings [ER 12.2.53]. The ExA notes that during the Examination, the Applicant did not present the ExA with evidence of a rigorous design process that had let it to choose the approach presented at application stage, and further notes that the Applicant had discounted the possibility of alternative design solutions for the external appearance at an early stage in design development and did so without exploring the possibility of alternatives.

In doing so, it is the ExA's view that the Applicant has not fully met the criteria for good design set out in NPS EN-1 sections 4.5.3 and 4.5.4 [ER 12.2.54]. The ExA also notes that the fact the Applicant took the view that it was not necessary to appoint a chartered architect means that the Applicant has not taken the opportunity to work with the most appropriate professional consultants available to it, and the Applicant has not sought to enter into a process of independent design review to ensure that its proposals are as attractive, durable and adaptable as they can be [ER 12.2.55].

- 4.110 The ExA considers that the Applicant has not fully met the criteria for good design set out in NPS EN-1 and to address this has proposed that amended wording is inserted into Requirement 7 of the recommended Order to ensure that the OnSS and EBI buildings and surrounding new landscape proposals are subject to an independent design review process to ensure that they meet the criteria for good design and mitigate, as fully possible, any adverse impact on views and the character of the surrounding landscape [ER 12.2.56].
- 4.111 The ExA concludes that the Proposed Development has the potential for significant impacts on landscape character and visual amenity and that it would not fully meet the criteria for good design and therefore attributes negative weight in the planning balance to landscape, visual and good design matters [ER 12.2.61]. To address this, the ExA proposes additional wording for Requirement 7 as set out in the paragraph above, and with the additional wording the ExA is satisfied that the Proposed Development could meet the criteria for good design set out in NPS EN-1 and therefore would not weigh against the case for the Proposed Development [ER 12.2.62]. The ExA notes that if the Secretary of State considers that the additional wording is not necessary, then the ExA's view is that in that circumstance the effects of the Proposed Development on landscape and visual matters including good design would have negative weight in the planning balance [ER 12.2.62]. The Secretary of State has considered that the wording proposed by the ExA for Requirement 7 is appropriate and agrees that this should be included in the Order and a modified version of this Requirement to ensure that the Proposed Development meets the criteria for good design. The Secretary of State has modified the definition of the independent review panel to include the requirement to obtain the approval of the local planning authority for the composition of the panel.

*Traffic and transport including public rights of way*

- 4.112 The ExA notes relevant policy considerations for traffic, transport and public rights of way in NPS EN-1 and the Local Plan [ER 12.3.1 et seq.].
- 4.113 The Applicant's case regarding traffic and transport matters was primarily set out in ES Volume A3 Chapter 7 [ER 12.3.6], and the Applicant also submitted a Traffic and Transport Technical Report, Abnormal Load Report, Outline Construction Traffic Management Plan ("oCTMP") and Outline Public Right of Way Management Plan ("oPRoWMP") [ER 12.3.6].
- 4.114 Detailed mitigation measures are to be agreed with the relevant stakeholders in the final CTMP that would be secured by Requirement 19 of the Applicant's final draft Order [ER 12.3.7]. The ES concluded that there would be 'slight



adverse' potential residual impacts on driver delay (local roads), severance, pedestrian amenity, and accidents and road safety (in relation to Killingwoldgraves Lane/Coppleflat Lane) [ER 12.3.8]. Further, the ES concluded that impacts on driver delay (capacity) and road safety for all other links except Killingwoldgraves Lane/Coppleflat Lane were assessed as being 'not significant' [ER 12.3.9]. With regard to cumulative and transboundary impacts, the Applicant concluded that "no cumulative or inter-related effects have been identified which increase the significance of any standalone assessment", and also concluded that there was no potential for significant transboundary effects regarding traffic and transport [ER 12.3.13].

#### *Assessment methodology*

- 4.115 Lockington Parish Council ("LPC") raised queries regarding some of the assessment methodology used by the Applicant [ER 12.3.14], and at ExQ1 the ExA asked the Applicant and ERYC to clarify a number of traffic and transport assessment matters [ER 12.3.15]; responses to the methodological matters were provided by the Applicant and the Applicant also responded to the queries raised by LPC [ER 12.3.16].
- 4.116 The ExA notes that ERYC's LIR stated that the methodology and findings underpinning the ES in regard to highways had been agreed, and ERYC also confirmed it was satisfied with the assessment of impacts for the Proposed Development alone and cumulatively [ER 12.3.42]; in the final SoCG with ERYC, all matters regarding highways methodology were noted as being agreed [ER 12.3.45]. A draft SoCG with National Highways was submitted with the Application, and all matters were either agreed or where not agreed were noted as being of no material impact; however, as this was not signed, the ExA attached little weight to it [ER 12.3.45]. On 16 December 2022, the Secretary of State requested the signed version of the SoCG with National Highways, and the Applicant subsequently provided it on 13 January 2023, which confirmed that matters were either agreed or where not agreed were of no material impact. The ExA considers the Applicant's assessment methodology in relation to traffic and transport is appropriate and acceptable.

#### *Traffic mitigation and improvements*

- 4.117 In response to ExQ1, the Applicant stated that road widening would be designed to fall entirely within the public highway and would be subject to technical approval of the Highway Authority under Article 14 of the Order, and ERYC confirmed it agreed with the Applicant's response [ER 12.3.17]. The ExA notes that the oCTMP contains measures to promote more sustainable travel measures for the workforce, with a CTMP Co-ordinator to be appointed, and measures referenced in the oCTMP including the promotion of car sharing and the provision of facilities for cyclists [ER 12.3.48]. The ExA considers this would be an acceptable approach having regard to the predicted volume, nature and duration of workforce traffic that would be generated during the construction phase [ER 12.3.48].

#### *Primary logistics compound near Lockington*

- 4.118 LPC raised objections in relation to the location off the proposed Primary Logistics Compound (“PLC”) on the outskirts of Lockington [ER 12.3.18]. LPC view was that the PLC could be located in an alternate location [ER 12.3.18]; LPC contended that this alternate location would alleviate traffic issues for residents of Lockington [ER 12.3.20]. The Applicant cited traffic safety concerns, landowners use of the land for other purposes, and potential issues related to nearby springs and potential for flooding issues as reasons that would weigh against the alternative logistics compound proposed by LPC [ER 12.3.21]. ERYC confirmed that it was satisfied with the Applicant’s justification for site selection, with the primary logistics compound being accessed off of Station Road West [ER 12.3.23].
- 4.119 The ExA considered the concerns expressed by LPC and its alternative logistics compound and notes that whilst this would reduce the predicted construction traffic movements on Station Road West, and so would benefit the residents of Lockington, it would have the effect of shifting the predicted construction traffic movements on to Station Road East and thereby impact the residents of Aike, although the ExA acknowledges there are fewer people residing in Aike than Lockington [ER 12.3.49]. The ExA notes however that LPC has not provided substantive evidence to counter the Applicant and ERYC’s preference for the PLC location for reasons of both highway safety and traffic flow along the A164, and the ExA considers that these considerations carry more weight than the issue of some increase to driver delay for the residents of Lockington [ER 12.3.50]. The ExA does not consider that vehicles entering or exiting the PLC in the location proposed by the Application would give rise to any significant safety concerns for users of the footway on the northern side of Station Road West [ER 12.3.51]. The ExA is content that the Applicant’s preferred location would be suitable and would be preferable to the alternative logistics compound put forward by LPC [ER 12.3.52, ER 12.3.67].

*OnSS access road and alternatives considered*

- 4.120 Gordons LLP and Quod made a number of representations on behalf of Mr and Mrs Dransfield who reside at Jillywood Farm, with Quod describing what it considered would be a better, alternative access to the OnSS for both construction and operational use [ER 12.3.24], and both Gordons LLP and Quod submitted further information to support their argument for an alternative location for the OnSS access route running to the west of the OnSS site with an access taken off the A164 [ER 12.3.28].
- 4.121 The ExA accepts the view expressed by both the Applicant and ERYC that the proposed OnSS access road would provide better access for traffic in terms of road safety and not increasing congestion than if an access from the A164 was developed [ER 12.3.53] and furthermore should construction works for the Jock’s Lodge Improvement Screen (“JLIS”) happen to coincide with those for the Proposed Development then the OnSS access road from the A1079 would spatially separate the construction impacts [ER 12.3.54]. The ExA concurs with the views expressed by the Applicant and ERYC on this matter [ER 12.3.55] and considers that the Applicant has adequately assessed alternatives to its preferred OnSS access road including the alternative put forward by Quod on behalf of the Dransfields [ER 12.3.68]. The ExA considers that the benefits of

the Applicant's preferred route in terms of highway safety and traffic flow would outweigh any limited disbenefits that may arise regarding ecology, flood risk or amenity impacts [ER 12.3.68].

*Impacts on level crossings*

- 4.122 Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited ("NR") expressed concerns about the impact of construction traffic on level crossings and in particular the Wansford Road level crossing; NR contended that the increase in Heavy Goods Vehicles associated with the construction phase of the Proposed Development had the potential to cause further deterioration in the condition of this and other nearby level crossings [ER 12.3.31].
- 4.123 In response to ExQ2, NR stated that an option agreement and deed of easement had been agreed and would be exchanged simultaneously with a private side agreement on the outstanding level crossing issues [ER 12.3.32]. The inclusion and retention of NR's preferred wording for the protective provision in Schedule 9 Part 4 of the final draft Order was confirmed and NR withdrew its objection to the Proposed Development [ER 12.3.56]. In light of this, the ExA is content that this issue has now been resolved such that the Proposed Development would not give rise to any adverse impacts on level crossings.

*Impacts on public rights of way, pedestrians and cyclists*

- 4.124 In its LIR, ERYC noted that there would be 36 locations where the construction works for the Proposed Development would intersect with the PRow network [ER 12.3.33]. For the majority of these, there was a proposed temporary closure of PRows for no longer than three months at any one time or no longer than six months over the whole construction period, however permanent diversions were proposed for Skidby Footpath No. 16 and Rowley Bridleway No.13, and a longer-term temporary diversion for Barmston Footpath No.4 at the proposed landfall compound area [ER 12.3.33].
- 4.125 In its RR, the East Riding of Yorkshire and Kingston Upon Hull Local Access Forum raised concerns about the level of detail provided about footpath diversions, the duration of the temporary closures, and the longer-term management of footpaths, including remedial measures arising from soil settlement [ER 12.3.36]. The Applicant explained that the final PRow Management Plan that would be required as part of the final CoCP under Requirement 18 of the final draft Order would deal with post-construction monitoring and maintenance issues for all reinstated footpaths [ER 12.3.37]. In its RR, the Ramblers, East Yorkshire and Derwent Area, sought clarification over how access for walkers to routes around Jillywood Lane would be maintained [ER 12.3.36].
- 4.126 In the SoCG with ERYC, all matters relating to the assessment of effects on PRows had been agreed [ER 12.3.57]. The ExA concludes that impacts on PRows have been adequately assessed by the Applicant and the majority of impacts would be temporary and not significant with the exception of the footpaths identified in paragraph 4.124 above [ER 12.3.62]. However, the ExA

notes that even in the worst-case scenario, linkages to the existing PRow network would be maintained, and the ExA also considers longer-term monitoring and maintenance of reinstated PRowS has been adequately secured in the draft Order as part of the final CoCP [ER 12.3.62]. The ExA further notes that in the final SoCG with ERYC, all matters relating to traffic and transport, coastal recreation, National Cycle Network routes and PRowS are noted as being agreed [ER 12.3.65].

#### *Cumulative impacts*

- 4.127 In its LIR, ERYC lodged a holding objection in regard to how the onshore cable route would cross the A164 and the resulting implications for the JLIS [ER 12.3.40]. However, ERYC later stated that it was satisfied regarding the potential impacts of the Proposed Development on the JLIS and withdrew its objection related to this issue [ER 12.3.41]. Both ERYC and Hull City Council confirmed their view that there would be no cumulative effects from other schemes that would increase the significance of any of the project alone assessments for traffic impacts and the ExA has no reason to disagree with this [ER 12.3.63].

#### *Overall conclusions*

- 4.128 The ExA, with particular regard to paragraphs 5.13.6 and 5.13.7 of NPS EN-1, concludes that the Proposed Development would comply with NPS EN-1 and would also be in compliance with local plan policy [ER 12.3.69]. The ExA concludes that during the construction phase the Proposed Development, alone and cumulatively, would give rise to impacts on traffic and transport, including PRow users and pedestrians, that in the planning balance would have a negative weight to a minor degree [ER 12.3.70]. The ExA notes that the decommissioning phase would be likely to be less than or equal to the construction phase [ER 12.3.70]. The ExA considers that once in operation the Proposed Development would generate minimal additional traffic and its operational impacts would not therefore weigh against the case for the Proposed Development [ER 12.3.70].
- 4.129 The Secretary of State agrees with the ExA's conclusions on matters related to traffic and transport including PRow.

#### *Geology and ground conditions*

- 4.130 The ExA considers relevant policy to geology and ground conditions, including NPS EN-1 and the Local Plan [ER 12.4.1 et seq.]. The Applicant's case on this matter was set out in ES Volume A3 Chapter 1 [ER 12.4.5].
- 4.131 With regard to historic landfill sites and contaminated land, the Applicant stated that within the area of the Proposed Development there were mineral workings that had been backfilled, but that there were no known landfill sites [ER 12.4.10]. The ExA notes that in the final SoCGs with ERYC and the Environment Agency ("EA"), all matters in relation to geology and ground conditions were agreed [ER 12.4.12]. The ExA considers that Requirement 15 of the final draft Order, which requires submission of a contaminated land and groundwater scheme before any stage of the development could commence

and that this would need to be approved by the relevant local planning authority in consultation with the EA, is a suitable mechanism for identifying any contamination and approving any remedial measures that may be required before connection works could commence [ER 12.14.12]. Final versions of the outline soil management, site waste management and pollution prevention documents would be required to be included for approval of the relevant planning authority in consultation with the EA in the final CoCP [ER 12.4.13]. The ExA is satisfied that impacts of the Proposed Development on this issue would be acceptable and adequate mitigation has been secured in the draft Order. The Secretary of State agrees with the ExA on this matter, and notes that Requirement 15 provides conditions on the commencement of onshore work which satisfies the ExA concerns in relation to identifying contamination and remedial measures before connection works could commence.

- 4.132 With regard to mineral safeguarding areas, the Applicant noted that the Minerals Safeguarding Areas within the proposed Order limits would equate to 0.12% of the total of such Areas within the overall boundary of ERYC [ER 12.4.11]. ERYC confirmed it was satisfied with the Applicant's approach with regard to mineral resources [ER 12.4.14]. Whilst parts of the Proposed Development would cross through some minerals safeguarding areas, the ExA is content that the overall impact on minerals resources, when considered at local authority level, would be very limited [ER 12.4.14].
- 4.133 The ExA concludes that the Proposed Development would accord with NPS EN-1 and local policy in relation to this matter and that the overall effects on geology and ground conditions, either alone or cumulatively, would not weigh against the case for the Proposed Development [ER 12.4.18]. The Secretary of State agrees with the ExA's conclusions on this matter.

#### *Onshore historic environment*

- 4.134 The ExA notes policy and legislation relevant to the onshore historic environment, including NPS EN-1, the NPPF, the Infrastructure Planning (Decisions) Regulations 2010, the Electricity Act 1989, and the Local Plan [ER 12.5.1 et seq.]. The Applicant's ES Volume A3 Chapter 5 included an assessment of onshore archaeology and cultural heritage for the construction, operational and decommissioning phases [ER 12.5.11].
- 4.135 With regard to cumulative effects, the Applicant concluded there would be "no potential for significant effects" and also identified that there was no potential for significant transboundary effects in relation to the historic environment [ER 12.5.23]. In terms of inter-related effects, the Applicant did not consider that those identified would result in an effect of greater significance than when assessed individually [ER 12.5.24].
- 4.136 In its LIR, ERYC noted that only one designated heritage asset would be located within the Order limits - Beverley Sanctuary Limit Stone in Bishop Burton, a Scheduled Monument ("SM") and ERYC noted that the Applicant had proposed measures to avoid direct physical effects [ER 12.5.26]. With regard to potential for effects on non-designated heritage assets including World War II defences and concrete tracks at Lissett Airfield, ERYC advised that the means of dealing with these assets would need to be agreed through the

development of a Written Scheme of Investigation (“WSI”) [ER 12.5.26]. ERYC confirmed during the Examination that it had no concerns or objections in this regard [ER 12.5.26].

- 4.137 HE expressed concern that appropriate bodies, including HE, might not be adequately consulted on the potential impact of the onshore ECC on an area of considerable archaeological potential, based on the wording set out in the Applicant’s WSI for Onshore Archaeology [ER 12.5.27], however the Applicant responded confirming its intention that HE would be consulted on matters of archaeological science and high-level research questions and at the request of Humber Archaeology Partnership [ER 12.5.28].
- 4.138 With regard to the Beverley Sanctuary Limit Stone SM, HE agreed with the Applicant’s assessment that there would be no physical impact on the designated site, and that construction activities would result in a short-term adverse impact to the setting.
- 4.139 The Applicant submitted a final SoCG with HE, with three matters retaining the position of ‘not agreed. No material impact’ within the submission [ER 12.5.39]. The ExA noted the outstanding points which remain as not agreed between the Applicant and HE, and taking these into account and considering the Applicant’s progress addressing concerns raised by HE relating to the mitigation of potential impacts to onshore heritage assets, the ExA considers that the Applicant’s assessment methodology in relation to the historic environment and its methodology to ensure the safety of the Beverley Sanctuary Limit Stone SM are appropriate and acceptable [ER 12.5.40].
- 4.140 The ExA is satisfied that, should archaeological finds be discovered during construction, the WSI secured by Requirement 17 would ensure that they would be protected, recorded or preserved as secured, and the ExA notes that part 17(2) of the Requirement ensures that HE would be consulted by ERYC on the detail of the WSI [ER 12.5.41]. Further, the ExA is satisfied that the effect on the setting of the Beverley Sanctuary Limit Stone would be temporary and for a limited period, and therefore considers that it and its setting would not be adversely affected as a result of the Proposed Development [ER 12.5.42].
- 4.141 The ExA considers that the policy requirements in NPS EN-1 and NPS EN-3 with regard to the historic environment have been met [ER 12.5.43]. The ExA considers that there would be no substantial harm from the construction or operation of the Proposed Development, either physically or on the setting of any heritage assets, including non-designated assets [ER 12.5.44]. The ExA is satisfied that there would be measures in place to ensure that, should new assets be found in the form of archaeological remains, there would be measures in place to ensure they are adequately protected [ER 12.5.44]. The ExA concludes that the Proposed Development would also therefore comply with the guidance contained within the NPPF, the requirements of the Electricity Act 1989, and policy ENV3 of the Local Plan [ER 12.5.44].

*Overall conclusions on onshore historic environment*

- 4.142 The ExA considers that all impacts have been addressed in a manner that complies with the historic environment elements of NPS EN-1 and EN-3, such

that the Proposed Development would not harm the historic environment, and that furthermore there is potential for public benefit to derive from archaeological investigation undertaken as part of the Proposed Development [ER 12.5.45]. The ExA is satisfied that the Proposed Development would have no likely significant effects on the historic environment and is satisfied that mitigation would be adequately provided for and secured through the recommended Order. The ExA considers that onshore historic environment matters would not weigh against the case for the Proposed Development [ER 12.5.46].

- 4.143 The Secretary of State has considered the ExA's conclusions on this matter. The Secretary of State is aware that where there is an identified harm to a heritage asset he must give that harm considerable importance and weight. The Secretary of State notes the temporary impact on the setting of the Beverley Sanctuary Limit Stone during construction and therefore ascribes moderate negative weight to matters related to the historic environment in the planning balance.

#### *Onshore water environment*

- 4.144 The ExA notes relevant policy in NPS EN-1, EN-3 and the Local Plan [ER 12.6.1 et seq.]. The Applicant's case relating to the onshore water environment was mainly set out in ES Volume A3 Chapter 2; in addition Volume A3 Chapter 1 included assessments of potential impacts on groundwater receptors [ER 12.6.6].

#### *Impacts on watercourses and groundwater*

- 4.145 In the final SoCG with the EA, all matters were noted as having been agreed [ER 12.6.19]. The ExA is content that the approval of detailed matters pertaining to watercourses and groundwater has been adequately secured in the draft Order [ER 12.6.30]. In the final SoCG with ERYC in its role as Lead Local Flood Authority, all matters relating to the assessment of impacts on watercourses had been agreed [ER 12.6.31]. The ExA is content that the Proposed Development, either alone or cumulatively, would not give rise to any significant impacts on watercourses, and notes that the Applicant's assessment that the Proposed Development would comply with the Water Framework Directive and the ExA has not been presented with any reason to disagree with this [ER 12.6.31].

#### *The OnSS, flood risk and sustainable drainage systems*

- 4.146 Mr and Mrs Taylor raised concerns about parts of the proposed OnSS site that currently act as natural flood areas [ER 12.6.20]. The Applicant's Position Paper on Hydrology and Flood Risk was submitted in response, which contained an assessment of the modelled water levels for the OnSS and EBI, and in its LIR ERYC noted that the design parameters would allow for raised floor levels at the OnSS above anticipated flood levels for the lifetime of the development [ER 12.6.22].
- 4.147 The ExA has no reason to disagree with the Applicant's contention that sufficient space would be available within the OnSS area for all of the

sustainable drainage system measures plus other measures such as Biodiversity Net Gain features, however the ExA notes this could only be confirmed once detailed design for all of the infrastructure at the OnSS has been undertaken [ER 12.6.32]. The ExA is satisfied that matters relating to flood risk and sustainable drainage systems, particularly in the OnSS, have been adequately accounted for and that further assessments based on the detailed design are properly secured in the final draft Order [ER 12.6.34].

#### *Sequential Test and Exception Test*

- 4.148 The Applicant applied the Sequential and Exception Test in the OIFRA. The Applicant stated in the OIFRA that the built elements of the permanent OnSS would be located in Flood Zone 1 and the permanent access road would also primarily be located in Flood Zone 1; however, where part of the access road would pass over the Atkin's Keld watercourse, it would be within Flood Zone 3. Therefore, the Applicant considered that the application of the Exception Test was required [ER 12.6.27]. For the first part of the Exception Test, the Applicant argued that the Proposed Development would provide wider sustainability benefits. In regard to the second part, the Applicant stated that where the permanent access track would pass over a watercourse it would be designed to maintain floodplain capacity and flow conveyance, including an allowance for climate change [ER 12.6.27]. No concerns regarding the Applicant's assessment of the Sequential Test and Exception Test were raised by the EA or ERYC [ER 12.6.28].
- 4.149 Quod, on behalf of the Dransfields, contended that taking the permanent access road to the OnSS from the west of the A164 would avoid the need to cross areas in Flood Zone 3 [ER 12.6.21]. The ExA acknowledges this, but notes that that would depend on detailed design considerations, and that even if that were the case, the Applicant and ERYC have cited reasons relating to traffic flow and road safety that support the preferred location for the permanent access road. This matter is considered above in the traffic and transport section.
- 4.150 The ExA is satisfied that the first part of the Exception Test has been passed since the Proposed Development would clearly provide wider sustainability benefits through the provision of renewable energy, and notes that areas of Flood Zone 3 that would be crossed by the permanent access road for the Proposed Development would not be large in size and the Applicant has demonstrated that suitable mitigation could be provided [ER 12.6.36]. Further, the ExA has had regard to the responses from ERYC and the EA and considers that the Applicant has adequately demonstrated that flood capacity and flow conveyance would be maintained [ER 12.6.36]. It is the ExA's view that the second part of the Exception Test has been met [ER 12.6.36].

#### *Nutrient levels in river basin catchments*

- 4.151 During the course of the examination, a Written Ministerial Statement ("WMS") was issued in relation to nutrient levels in some river basement catchments, including examples in the ERYC area [ER 12.6.29]. The Applicant noted that the Hornsea Mere Special Protection Area ("SPA"), which is located entirely within the Stream Dyke catchment, was assessed as being in unfavourable



condition due to excess nitrogen and phosphorous, however the Applicant contended that, as the Proposed Development was not located in the Stream Dyke catchment, there was no mechanism for it to increase the supply of nitrogen and phosphorous to Hornsea Mere SPA [ER 12.6.29].

- 4.152 The EA considered that there would be no implications for the Proposed Development as a result of the WMS and the ExA is satisfied that there would be no implications arising from this WMS for the Proposed Development [ER 12.6.37].

*Overall conclusions on onshore water environment*

- 4.153 As detailed in the final SoCGs with ERYC and the EA, all matters regarding hydrology and flood risk have been agreed [ER 12.6.38]. The ExA considers the Applicant has taken reasonable steps to avoid development in Flood Zone 3 as far as possible and it has been agreed by the EA and ERYC that mitigation measures would adequately mitigate impacts [ER 12.6.39]. The proposed water attenuation feature and associated sustainable drainage systems at the OnSS would alleviate flood risk taking account of climate change and floor levels at the proposed OnSS site would be sufficiently elevated to avoid flooding [ER 12.6.40]. The ExA considers that appropriate mitigation measures for the onshore water environment have been adequately secured in the final draft Order [ER 12.6.40]. The ExA notes that impacts during the construction phase would be localised and minimal and the ExA concludes that the Proposed Development would be in accordance with NPS EN-1 and local policy relating to impacts on the onshore water environment [ER 12.6.41].
- 4.154 The ExA concludes that, with the proposed mitigation measures in place, the overall impact of the Proposed Development alone and cumulatively on the onshore water environment would not weigh against the case for the Proposed Development [ER 12.6.42]. The Secretary of State agrees with the ExA's conclusions on this matter.

*Socio-economic and land use effects*

- 4.155 The ExA notes relevant policy in NPS EN-1 and the Local Plan [ER 12.7.1 et seq.]. The Applicant's case regarding socio-economics was mainly set out in ES Volume A3 Chapter 10 [ER 12.7.6 et seq.], and ES Volume A3 Chapter 6 covered land use and agriculture [ER 12.7.12 et seq.].
- 4.156 The ES concluded no likely significant cumulative effects on land use, agriculture or recreation (including use of PRoWs) from construction, operation or decommissioning of the Proposed Development [ER 12.7.24], and that there would be no potential for transboundary effects with regard to land use and agriculture, and no significant inter-related effects in relation to land use and agriculture from construction or operation of the Proposed Development [ER 12.7.25].
- 4.157 The ExA notes that the final SoCG with ERYC notes agreement on all matters regarding the socio-economic impacts of the Proposed Development [ER 12.7.46]. Overall, the ExA agrees with ERYC's view that the Proposed Development has the potential to provide investment into the area and to

deliver employment and training opportunities, and notes that the proposed Development would therefore accord with EN-1 and local policy in this regard [ER 12.7.48].

- 4.158 The ExA considers that, with mitigation, there would be no likely significant effects on land use and agriculture from the construction, operation or decommissioning of the Proposed Development alone or cumulatively with other projects. The ExA concurs with the Applicant's assessment of impacts on BMV agricultural land as not significant after mitigation, based on the amount of permanent land loss being less than 20 hectares, and taking account of the soil management measures in the CoCP secured through the draft Order. Therefore, the ExA concludes that land use and agriculture matters (excluding PRow) would not weigh against the case for the Proposed Development [ER 12.7.49].
- 4.159 The ExA concludes that the Proposed Development would give rise to beneficial economic impacts in terms of job creation and retention. However, due to the inherent economic uncertainties, until future commercial decisions have been made, the ExA considers that a cautious approach to the assessment of benefits should be applied. The ExA notes that there have been no adverse socio-economic effects that have been identified. The ExA concludes that the impacts of the Proposed Development on socio-economic matters would have a minor positive weight in the planning balance [ER 12.7.50]. The Secretary of State agrees with the ExA's conclusions on this matter.

#### *Onshore ecology*

- 4.160 The ExA notes that the River Hull Headwaters Site of Special Scientific Interest would be the only statutory site that would fall within any part of the Order limits [ER 12.8.11]. With regard to protected species, surveys submitted by the Applicant identified that:
- two trees had bat emergence potential, although there was no evidence of any maternity roosts within the Order limits, but that six bat species were recorded utilising habitats within the Order limits for foraging and commuting, including three that are considered as Species of Principal Importance, resulting in the need for additional mitigation measures to be undertaken [ER 12.8.24];
  - three outlier badger setts would be subject to a badger mitigation licence application should pre-construction surveys confirm that they remain present and in use by badgers [ER 12.8.26];
  - that water vole field signs were recorded at six watercourses within the survey area [ER 12.8.28]; and,
  - that one of the ponds surveyed indicated the presence of great crested newts ("GCN") approximately 200 metres from the onshore ECC, with the Applicant proposing that, prior to commencement of construction, all ponds that had not been surveyed within two years and any that were yet to be surveyed would be surveyed, with the effect on GCN to be of minor adverse significant which was not considered significant in EIA terms [ER 12.8.28].

- 4.161 The ExA notes that in its final Risk and Issues Log and final SoCG, NE confirmed that it was satisfied with all matters in relation to onshore ecology, and ERYC is content with the assessment of impacts for both the project alone and cumulatively in terms of onshore ecology [ER 12.8.46]. Further, it is the ExA's view that the issue of Biodiversity Net Gain has been adequately provided for by the Applicant [ER 12.8.46].
- 4.162 The ExA agrees with the Applicant's assessment that the Proposed Development would have the potential to give rise to minor adverse impacts on bats, badger, great crested newts, water vole, and breeding and over-wintering bird species, but that due to the nature and location of construction activities and the species numbers likely to be affected, the impacts of the project alone would be minor adverse and would not be significant [ER 12.8.47].
- 4.163 The ExA notes that the Proposed Development would avoid significant harm to biodiversity interests and therefore the ExA concludes that the Proposed Development alone and cumulatively would accord with EN-1 and local policy in this regard [ER 12.8.49].
- 4.164 The ExA considers that the overall effects on onshore ecology would be of limited negative weight in the planning balance in the short-term due to the construction operations, and notes that the proposed enhancement and biodiversity net gain measures would give rise to positive benefits of limited positive weight in the longer term. Taken together, the ExA concludes that the overall effects of the Proposed Development when all of its phases are considered together, would not weigh against the case for the Proposed Development [ER 12.8.50].
- 4.165 The Secretary of State agrees with the ExA's conclusions on this matter.

#### *Noise and vibration*

- 4.166 The ExA considers that policy requirements with regard to noise and vibration in EN-1 and local policy have been met through: consultation and assessment of the noise impact of the Proposed Development during the construction, operation and decommissioning phases; and, the identification, selection and layout of plant to minimise noise emissions and the use of landscape features, bunds or noise barriers to reduce noise transmission [ER 12.9.35 et seq.].
- 4.167 Mr and Mrs Dransfield [ER 12.9.21 et seq.] and Mr and Mrs Taylor [ER 12.9.31 et seq.] raised concerns relating to noise and vibration impacts. Mr and Mrs Dransfield's concerns included the adequacy of the Applicant's noise assessment to consider the true impact on the Dransfield's property [ER 12.9.23], and Mr and Mrs Taylor's concerns included the effect on living conditions for residents of the farmhouse and around the potential effect of construction noise and disturbance on elderly rescue ponies, some with respiratory problems, that resided at the farm, with a vet's report confirming that construction work in such a close vicinity to where the animals were housed and grazed could have a negative impact on their welfare [ER 12.9.32]. The ExA is satisfied that the Proposed Development would not result in significant adverse effects from noise and vibration for either Mr and Mrs Taylor or Mr and Mrs Dransfield at their respective residence [ER 12.9.37].

4.168 The ExA concludes that the overall noise and vibration effects associated with the Proposed Development would, both the project alone and cumulatively, not weigh against the case for the Proposed Development [ER 12.9.38].

4.169 The Secretary of State agrees with the ExA's conclusions on this matter.

#### *Air quality and health*

4.170 Mr and Mrs Taylor advised that the effect of the Proposed Development on animal welfare related to concerns around the potential effect of noise and disturbance arising from construction on the elderly rescue ponies, some of which have respiratory problems. As noted above, a vet's report confirmed that construction work in such a close vicinity to where the animals are both housed and grazed could have a negative impact on their welfare [ER 12.10.15]. The Applicant advised that specific consideration of livestock and horses was not typical in the EIA process, but it considered that the assessments undertaken for the OnSS on human and ecological receptors sufficiently assessed constructional and operational impacts that would arise and that the CoCP would secure the necessary mitigation measures which would avoid significant effects arising from the Proposed Development [ER 12.10.16].

4.171 The ExA considers that policy requirements with regard to air quality in EN-1 have been met through consultation and assessment of the impact of air emissions associated with the Proposed Development during its construction, operation and decommissioning phases [ER 12.10.27]

4.172 As a result of the Applicant's consultation and assessment work, alongside the cumulative assessment of potential adverse effects on air quality and assessment of impacts on receptors within the HCC AQMA and the saltmarsh feature of the Humber Estuary SAC, the ExA considers the Proposed Development would be in compliance with local plan policy relating to air quality [ER 12.10.28].

4.173 The ExA concludes that the overall effects on air quality would, both for the project alone and cumulatively, not weigh against the case for the Proposed Development [ER 12.10.29].

4.174 The Secretary of State agrees with the ExA's conclusions on this matter.

#### *Overall conclusions*

4.175 The ExA is satisfied that there has been a thorough consideration of the principal and other issues through the Examination in relation to onshore planning issues [ER 12.11.1]. The ExA applies the planning balance to these and all other relevant Examination matters in Chapter 14 of its Report. The Planning Balance is considered by the Secretary of State in section 7 of this letter.

## **5 Findings and Conclusions in Relation to Habitats Regulations Assessment**

5.1 This section provides a summary of the HRA conclusions. Please refer to the Hornsea Project Four Habitats Regulations Assessment report for further details of this assessment.

- 5.2 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 12nm 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. In this letter both sets of regulations are referred to collectively as the 'Habitats Regulations'. 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 12nm limit, so both sets of Regulations apply.
- 5.3 The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation ("SACs"). The Regulations also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together form part of the UK's National Site Network.
- 5.4 The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the United Kingdom the same protection as sites within the National Site Network (collectively referred to here as "protected sites").
- 5.5 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 (considerations of overriding public interest), 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)."*

- 5.6 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 (considerations of overriding public interest), 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)."*

- 5.7 The Habitats Regulations require that, where the project is likely to have a significant effect (“LSE”) on any such site, alone or in-combination with other plans and projects, an appropriate assessment (“AA”) is carried out to determine whether the project will have an adverse effect on the integrity (“AEol”) of the site in view of that site’s Conservation Objectives.
- 5.8 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” (“IROPI”) for the plan or project to proceed.
  - Compensatory measures are secured to ensure that the overall coherence of the network of protected sites is maintained.
- 5.9 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 protected Site can only be authorised once the above tests have been met.
- 5.10 The complete process of assessment is commonly referred to as a Habitats Regulations Assessment (“HRA”). While noting that it is for the Secretary of State to carry out the HRA, the ExA concluded:
- AEol of the Flamborough and Filey Coast SPA could not be excluded beyond reasonable scientific doubt because of the predicted collision mortality of the kittiwake feature from the Proposed Development in combination with other offshore wind farm projects; and
  - AEol of the Flamborough and Filey Coast SPA could not be excluded beyond reasonable scientific doubt because of the predicted displacement and disturbance of the guillemot feature from the Proposed Development in combination with other offshore wind farm projects.
- 5.11 The Secretary of State’s HRA is published alongside this letter. The following paragraphs, which provide conclusions, must be read alongside the HRA which is the full statement of the Secretary of State’s consideration of these matters.
- 5.12 The Secretary of State has carefully considered the information presented before him and during the examination, including the Report on the Implications for European Sites (“RIES”), the Environmental Statement, representations made by Interested Parties, and the ExA’s Report itself. He considers that the Proposed Development has the potential to have an LSE on 36 National Site Network sites when considered alone and in-combination with other plans or projects.
- 5.13 The Secretary of State has undertaken an AA in respect of the conservation objectives of the sites to determine whether the Proposed Development,

either alone or in-combination with other plans or projects, will result in an AEol of any protected sites for which there are LSEs. The Secretary of State has considered the available information, including the mitigation measures secured through the Order and DMLs and has concluded that an AEol of any protected site can be excluded beyond reasonable scientific doubt, other than the Flamborough and Filey Coast due to in-combination impacts on the kittiwake and guillemot features, in accordance with the recommendation of the ExA.

#### *Consideration of further tests under the Habitats Regulations*

- 5.14 The Secretary of State has therefore reviewed the Proposed Development in the context of Regulations 64 and 68 of the Conservation of Habitats and Species Regulations and Regulation 28 of the Offshore Habitats Regulations to determine whether it can be consented.
- 5.15 Consent may only be given under Regulation 64 and 28 of the Habitats Regulations where no alternative solutions to the project are available which are less damaging to the affected protected site and where Regulation 68 is satisfied.
- 5.16 Regulations 64 and 29 of the Habitats Regulations allow for the consenting of a project even though it would cause an adverse effect on the integrity (“AEol”) of a protected site if it is required for IROPI. Regulations 68 and 36 of the Habitats Regulations require the appropriate authority to secure any necessary compensatory measures to ensure that the overall coherence of National Site Network is protected.
- 5.17 In accordance with relevant guidance on the application of HRA, the Secretary of State has reviewed the Proposed Development following a sequential process, considering:
- Alternative solutions to the Proposed Development that have been sought;
  - Whether there are IROPI for the Proposed Development to proceed; and
  - Compensation measures proposed by the Applicant for ensuring that the overall coherence of the National Site Network is protected have been assessed.

#### *Alternative Solutions*

- 5.18 The objectives for the Proposed Development are:
- support decarbonisation and security of the UK’s energy supply by developing a large-scale offshore wind farm to optimise generation and export capacity;
  - develop a project at low cost to consumer;
  - deliver a significant volume of offshore wind in the 2020s (Hornsea Four could generate power from 2028 / 2029);
  - optimise the use of available sites by offshore wind development through further development within the former Hornsea Zone of the north-western portion;

- develop an array which makes optimal use of viable developable seabed within the western portion of former Hornsea Zone;
- make efficient use of available grid connection capacity;
- to be delivered in a safe and efficient manner; and
- to provide flexibility to allow for future technological innovation which would complement a Hornsea Four wind farm.

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

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

5.20 Following a review of the information submitted by the Applicant and comments provided by IPs, as well as the recommendation of the ExA and having identified the objectives of the Proposed Development and considered all alternative solutions to fulfil these objectives, the Secretary of State is satisfied that no alternative solutions are available that would meet Project objectives with an appreciable reduction in predicted impacts to protected sites, and IROPI must be considered. The Secretary of State notes that further design refinements have been made since the close of Examination, notably the removal of GBS as a foundation type for WTGs, but he considers that this is not necessary to avoid an AEoI of any protected site (see Section 5.4 of the HRA).

*Imperative Reasons of Overriding Public Interest*

5.21 A development, having an AEoI of a protected 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.

5.22 The Secretary of State has carefully considered whether IROPI can be established. The Secretary of State agrees with the conclusions of the ExA and is satisfied that there are clear imperative reasons of overriding public interest for the Project to proceed. In arriving at this decision, the Secretary of State has reviewed how the Project provides an essential public benefit that is imperative, despite the harm to the integrity of the Flamborough and Filey Coast SPA.

*Compensatory measures*

5.23 To compensate for the adverse effects on kittiwake, the Applicant proposed to provide a single artificial nesting structure (ANS) which would comprise



either a repurposed existing oil or gas platform that is due for decommissioning; a new offshore ANS; or a new onshore ANS, to support a breeding population of kittiwake. The Applicant proposed to provide the ANS at least three kittiwake breeding seasons ahead of the operation of the Proposed Development.

- 5.24 For the repurposed platform, the Applicant identified the Wenlock Platform which lies 145km off the coast of Humberside. The platform currently supports breeding kittiwake. The Applicant proposed to design the topside of the Wenlock Platform to ensure as many ecological elements of the existing platform are retained during repurposing as possible.
- 5.25 With regards to a new offshore ANS, the Applicant used a heat mapping process based on a wide range of ecological criteria, as well as technical and commercial parameters to identify broad areas to locate a new ANS. Initial designs for either a new or repurposed offshore ANS comprise a topside which would provide space for approximately 750 nests.
- 5.26 For the onshore ANS, the Applicant identified two search areas (Caton Bay to Newbiggin by the Sea and East Suffolk) within the onshore to nearshore environment using a suite of ecological criteria. The structures may comprise permanent buildings, allowing for internal access for monitoring, or prefabricated structures without internal access.
- 5.27 The Applicant stated that post-construction monitoring of the ANS would be conducted to record both breeding birds and breeding success. The monitoring results will inform the adaptive management programme and influence any potential maintenance work required on the structure. Adaptive measures will be explored with relevant stakeholders and may include:
- extension of the structure to facilitate further nesting spaces;
  - additional protection from elements;
  - provision of nesting material;
  - enhanced recruitment support – kittiwake calls, decoys etc; and
  - provision of supplementary food.
- 5.28 The Applicant would convene a steering group to consult on the implementation of the compensation measures. The steering group would inform the final Kittiwake Compensation Implementation and Monitoring Plan.
- 5.29 To compensate for the adverse effects on guillemot, the Applicant proposed two measures: nest predator eradication; and reducing fishing bycatch.
- 5.30 The Applicant selected potential sites for the predator eradication measures based on the following parameters: nest site availability, vegetation cover, previous predator eradication attempts, rat presence, guillemot numbers, and historic evidence of guillemot nesting.
- 5.31 The Applicant identified the following locations where predator eradication would be feasible and beneficial to breeding guillemot:
- Bailiwick of Guernsey:
    - Alderney: several islands/ islets around the main island;

- Herm: including Herm, The Humps and Jethou; and
  - Sark: several islands/ islets around the main island.
- 5.32 The Applicant also proposed a range of adaptive management measures to further improve breeding numbers, including:
- providing artificial ground cover at potential cliff-top breeding sites to deter avian predators;
  - using playbacks, decoys, and white paint to simulate guano at potential breeding sites to increase the likelihood of recruitment; and
  - removing vegetation that provides habitat for rats.
- 5.33 Furthermore, the Applicant proposed that at the initiation of the predator eradication program, biosecurity measures would be put in place to prevent re-infestation by the target predator, or the arrival of other non-native mammalian predator species.
- 5.34 The Applicant committed to monitoring predators for at least two years after the baiting or trapping campaign, to record the removal of target species from the location. Monitoring for potential re-infestation will continue for the operational phase of the project. Guillemot productivity will also be monitored for the operational phase of the Project.
- 5.35 The Applicant committed to the predator eradications measures being implemented two years prior to operation.
- 5.36 For the bycatch reduction measure, the Applicant proposed using Looming Eye Buoy (LEB) technology to deter birds from gillnets. The Applicant also proposed to produce an adaptive management plan and if the bycatch technique is unsuccessful, another technique or fishery type may be chosen for bycatch reduction.
- 5.37 The Applicant proposed to contribute to the Marine Recovery Fund (MRF) which forms part of the Offshore Wind Environmental Improvement Package of the BESS, to provide strategic compensation, should the kittiwake or guillemot compensation measures fail to be effective.
- 5.38 The Applicant proposed fish habitat restoration as a secondary measure to support the primary compensation measures for kittiwake and guillemot. The habitat restored (namely, seagrass) would support several fish species which kittiwake and guillemot eat. The Applicant had commenced seagrass restoration trials at Spurn Point in the Humber Estuary with support from the Yorkshire Wildlife Trust (YWT). Surveys are being undertaken by the University of Hull to demonstrate the connectivity of seagrass in the Humber Estuary with kittiwake prey found in the North Sea. Further areas for seagrass restoration, if needed for adaptive management, are also being considered.

#### The IPs Position

- 5.39 With regards to the kittiwake compensation, NE agreed that the provision of 750 nesting sites on the proposed ANS would be sufficient to counter the predicted adverse effects on kittiwake. However, NE raised concerns around

the risk and longevity of compensation if only a single structure was provided [REP7-102]. NE also stated that the ANS should be in place four breeding seasons before the operation of any turbine.

- 5.40 NE highlighted that the availability of nesting habitat had not been proven to be a limiting factor on kittiwake population growth in the southern North Sea. Nevertheless, it advised that the proposed compensation measures would be ecologically feasible [REP7-102] and [REP7-061].
- 5.41 NE [REP2-082, superseded by AS-028 and AS-029] advised that the provision of onshore ANSs where natural nesting is limited or non-existent would be most likely to bolster the kittiwake population to deliver compensation: However, NE remained concerned that there could be insufficient breeding birds to recruit to the ANS, given the high number of artificial nest provision already proposed in the southern North Sea area. Advice from the RSPB [REP7-099], and its final SoCG with the Applicant [REP8-005], aligned with NE's concern around the need for further onshore ANSs.
- 5.42 East Suffolk Council expressed concern around the feasibility of progressing the onshore ANS option post-consent, based on the consenting challenges that it had experienced while working with other wind farm promoters in East Suffolk [REP7-094]. NE [REP7-102] and the RSPB [REP8-024] also expressed concern in relation to the vulnerability of an onshore structure to separate consenting risks following the DCO decision.
- 5.43 With regards to the guillemot compensation, both NE and the RSPB submitted advice throughout the Examination that insufficient evidence had been provided that the proposals would result in a demonstrable benefit to the UK NSN.
- 5.44 The SoCG between the Applicant and NE [REP7-061] identified that, whilst technically feasible, NE did not agree that the proposal had merit for guillemot or that evidence existed for efficacy and sufficient benefit to address the predicted adverse effects on the Flamborough and Filey Coast SPA.
- 5.45 With regards to the predator eradication measure, both NE and the RSPB advised that the proposals remained uncertain in terms of location, scale, effectiveness, and feasibility in respect of their ability to ensure the coherence of the UK NSN. Furthermore, in the final SoCG between the Applicant and NE [REP7-061], the efficacy of bycatch reduction and its suitability as a compensation measure remained not agreed. The final SoCG between the Applicant and the RSPB [REP8-005] noted the RSPB's view that bycatch reduction was not supported by adequate evidence that it could be of benefit to the target species of the Flamborough and Filey Coast SPA.
- 5.46 At the end of the Examination NE [REP7-102] expressed support for the seagrass measure in broad terms, but advised that it could not be considered compensation, either in itself or as a supporting measure because of the absence of an evidenced link to the target seabird species and the experimental nature of the restoration process. In its SoCG with the Applicant [REP8-005], the RSPB echoed NE's position.

- 5.47 NE [RR-029] and [REP7-102], the RSPB [REP8-024] and The Wildlife Trusts [RR-039] expressed support for strategic compensatory measures, but stated that they must deliver a benefit to impacted features and that measures to improve prey resources were most likely to offer success.
- 5.48 The RSPB [REP7-099] and [REP8-024] did not agree with the Applicant that the, yet to be legislated and implemented MRF, could be relied upon. It considered the assumption that measures would be available from the end of 2023 to be unrealistic considering the work required to establish the benefit to the impacted species.

*The ExA's conclusions*

- 5.49 Considering the evidence before the Examination, the ExA concluded [ER 13.12.135 et seq.] that uncertainty remained as to whether the compensation measures as proposed would be successful in ensuring the overall coherence of the UK NSN. Whilst acknowledging the more advanced maturity of the offshore ANS proposal for kittiwake compensation, the ExA noted that siting and detailing were far from finalised or secured at the close of Examination. The ExA appreciated that the remaining measures were provided without prejudice, but they were nevertheless far less mature and lacking in detail and insufficient evidence was provided to demonstrate that they could be developed and secured in an appropriate manner to deliver an effective and sufficient quantum of compensation at a suitable location.
- 5.50 Before placing any reliance on the measure, the ExA suggested that the Secretary of State should require the Applicant to undertake considerable additional work on the design and detailing of an ANS for kittiwake from the Flamborough and Filey Coast SPA, and to demonstrate a secure route to consenting, implementation and ensuring long-term management and monitoring. The ExA's considered that, if some or all of the without-prejudice measures put forward by the Applicant are required to compensate for any further AEol of the Flamborough and Filey Coast SPA, a very considerable amount of detailing, design and forward planning would be required.
- 5.51 The ExA recognised that predator control could benefit auk populations where there is evidence that predator pressure is a factor limiting auk nesting.
- 5.52 The ExA was content that, subject to satisfactory progress to formal agreement, the scheme could be implemented in the Bailiwick of Guernsey. However, the ExA considers there to be material doubts that this location would offer ecological connectivity with the relevant UK auk flocks and that compensation implemented here would adequately protect the coherence of the UK NSN.
- 5.53 The ExA also had concerns about the feasibility of using LEBs as a compensation measure for auks and suggested that the Secretary of State would require considerable additional evidence to demonstrate its effectiveness and to prove benefits to the target auk flocks from the Flamborough and Filey Coast SPA. Furthermore, the Secretary of State would need to be satisfied that the measure would be in addition to any existing and

forthcoming policy and legislative commitments in relation to the reduction of commercial fishing bycatch.

- 5.54 The ExA did not consider that there was sufficient evidence that it would provide effective compensation for the features affected by the Project.
- 5.55 The ExA notes that the implementation of the MRF is set out in current policy: however, neither the MRF nor any other appropriate vehicle for strategic compensation was in place at the end of the Examination.
- 5.56 The ExA also noted that the details of the strategic compensation in terms of locations, design, any necessary consents, timescales, and mechanism of implementation are as yet unknown, and advised that the Secretary of State would need to be satisfied that this work could be in place at an appropriate juncture to compensate for the predicted AEoI of the Flamborough and Filey Coast SPA.
- 5.57 The ExA [ER 14.2.20] concluded that the DCO should not be made pursuant to Regulations 62 and 64 of the Habitats Regulations.

*Post-Examination consultation*

- 5.58 During the determination period the Secretary of State's eight consultation letters invited the Applicant to provide further evidence to inform the AA and support the proposed compensatory measures. In relation to the kittiwake feature of the FFC SPA, the following additional information was sought:
- 5.59 For the guillemot predator eradication strategy, the following information was requested:
- Confirmation of the location(s) proposed for the predator eradication, and evidence that the necessary permissions to undertake the measures could be obtained at the location(s).
  - Evidence that nest predation is a significant limiting factor in the breeding success of auk species at the proposed location(s).
  - Evidence that the auk populations in the proposed location(s) are functionally linked to the populations at Flamborough and Filey Coast SPA.
  - If the proposed location(s) is outside of the jurisdiction of the UK, evidence that any made Order could adequately secure management of the site.
  - The MOU agreed by the States of Guernsey and the Alderney Wildlife Trusts.
- 5.60 For the bycatch reduction strategy, the following information was requested:
- Evidence that the use of LEBs would significantly reduce the bycatch of auks from the Flamborough and Filey Coast SPA.
  - Details of how the proposed measures will be secured for the lifetime of the project.
  - Evidence that the proposed measures will be in addition to any bycatch reduction measures required by UK policy or legislation.
- 5.61 In response, the Applicant largely referred the Secretary of State to the documents submitted during the Examination. It also submitted the requested

MOU with the States of Guernsey, and the MOU with Alderney Wildlife Trust to undertake the predator eradication measures. With regards to the bycatch reduction measures, the Applicant clarified that whilst general policy and legislation included ambitions to reduce seabird bycatch, no policies or legislation that enforces the reduction of seabird bycatch in a manner which overlaps with the Applicant's proposals, had been identified.

- 5.62 Natural England confirmed that it welcomed that MOUs between the Applicant and the States of Guernsey and Alderney Wildlife Trust, but it's concerns around the predator eradication programme remained, stating that there remained a high degree of uncertainty regarding both the deliverability and scalability of the measures proposed for auks. NE advised that the information provided predicts that the maximum predicted benefit from Herm (the primary location for eradication) is nest space for ~318 pairs of guillemot, and 200 of these spaces are located at The Humps, where it is not currently known whether any rats are present. Were there to be no rats in this location, it would reduce the potential primary offer to ~118 pairs. Even if nest space for ~318 pairs of guillemot could be created, the expected productivity falls far short of the predicted impacts, with the benefit to the UK NSN likely to be considerably diluted compared to gains achieved on the Channel Islands. NE also stated that there was significant uncertainty regarding the bycatch reduction measures.
- 5.63 The RSPB confirmed that it had reviewed the MOUs and other responses from the Applicant and confirmed that it did not present any new or substantive information beyond that already considered at the Examination, therefore its position on the proposed predator eradication compensation measure remained as set out during the Examination. With regard to the effectiveness of LEBs, the RSPB referred to a recent study undertaken by RSPB and Fuglavernd - BirdLife Iceland (ISPB), which tested the effects of LEBs at reducing bycatch in the Icelandic lumpfish fishery. Whilst acknowledging that the nature of this fishery and its operative conditions are different to gillnet fisheries operating in UK waters, the results suggested an absence of effect in terms of seabird bycatch mitigation for common and black guillemots.

### *Conclusions*

- 5.64 Having considered the recommendations of the ExA, the views of all IPs and the Applicants case, and all additional information provided in response to the consultation letters, the Secretary of State agrees with the recommendation of the ExA and cannot exclude an AEoI of the FFC SPA due to impacts on kittiwake and guillemot beyond all reasonable scientific doubt.
- 5.65 The Secretary of State is satisfied that the necessary compensatory measures can be secured and delivered to protect the coherence of UK NSN for kittiwake as required by Regulations 29 and 36 of the Offshore Habitats Regulations/ Regulations 64 and 68 of the Habitats Regulations.
- 5.66 The Secretary of State has reviewed the information provided during the Examination, the additional environmental information provided post-Examination, and the responses of the consultees, with regards to the compensation measures proposed for guillemot.

- 5.67 The Secretary of State notes that NE advised that compensation measures should be judged against their ability to compensate for 1,131 guillemot per year, however he agrees with the ExA and has judged the measures against their ability to compensate for 452 guillemot per year. The Secretary of State notes the ExA's concerns that the predator control measures would not adequately protect the coherence of the UK NSN for guillemot. He also notes NE's concern that the number of nest sites that could be created by removing predators from the compensation sites would not be sufficient to compensate for the number of birds predicted to be killed by the Project. The Secretary of State also notes the ExA's concerns regarding the effectiveness of LEBs as a compensation measure for guillemot.
- 5.68 The Applicant has undertaken an extensive literature review and provided evidence that the mammalian predator eradication has benefited guillemot populations in other locations. He notes that the Lundy Seabird Recovery Project, which was undertaken in 2001, resulted in a significant increase in guillemot numbers after rats were eradicated. The Secretary of State also notes that the Applicant has undertaken surveys of the islands within the Bailiwick of Guernsey and identified the presence of brown and/ or black rat in some locations. Furthermore, the Applicant identified areas of potentially suitable nesting habitat that are currently unoccupied, which may indicate that rats are preventing guillemot from nesting in these locations. The Secretary of State considers that the Applicants supporting evidence (Guillemot and Razorbill Compensation Plan [REP5-026], Predator Eradication Ecological Evidence [APP-196] and Predator Eradication Roadmap [REP5-030]) demonstrates that the measure has merit and has potential to be effective in compensating for impacts to guillemot.
- 5.69 The Secretary of State notes that the Applicant [REP8-017] maintained that, should the proposed predator eradication compensation be required, it would be sufficiently 'scalable' to address the greater adverse effects predicted under the parameters advocated by NE. However, it noted that the ability to increase the scale of the compensation was dependent on revisiting its less-progressed 'long-list' of island options for delivery. In their consultation response (dated 16th June 2023) NE advised that both compensation (bycatch reduction and predator eradication) would need to be delivered as a package. They also considered that to increase the likelihood of the predator eradication providing meaningful measures, all the islands preliminarily identified by the Applicant should be subject to eradication efforts, rather than 'holding back' some islands for adaptive management. NE, in their End of Examination Position on the Applicant's Proposed Compensatory Measures [REP6-057] also advised that there would be merit in exploring the use of ANS for guillemot as either an initial measure, or an adaptive management option.
- 5.70 The Secretary of State agrees with NE's advice on improving the efficacy of the predator eradication measures and the potential of ANS to provide compensation for guillemot and considers that these measures could be secured within the DCO.
- 5.71 He also takes comfort that adaptive management measures have been proposed and that should the rat eradication measures in the islands within

the Bailiwick of Guernsey fail to produce sufficient numbers of adult guillemot to compensate for the Project's effects, then these measures could be implemented in other locations by revisiting its less-progressed 'long-list' of island options for delivery.

- 5.72 During Examination, concerns were raised that proposed compensation sites lay outside the jurisdiction of the UK Government and regulators. In February 2023, the Applicant provided a Memorandum of Understanding between the States of Guernsey (dated 10th June 2022) and the Alderney Wildlife Trust (dated 20th December 2022) which provided a framework to ensure support and long-term security of the compensation measure. The Secretary of State is reassured that the eradication programme can be delivered at the proposed locations.
- 5.73 Furthermore, the Secretary of State notes NE's concerns regarding the connectivity between the proposed compensation sites and the UK NSN. However, the Secretary of State notes that in G3.4.1 Compensation measures for FFC SPA: Ecological Connectivity of Compensation Measures Annex 1 [REP3-034], the Applicant presents evidence that guillemot originating from North Sea colonies are likely to migrate through or disperse to the waters in the English Channel and Channel Islands. The Secretary of State is therefore comforted that there is sufficient evidence of connectivity between the Bailiwick of Guernsey and the UK NSN.
- 5.74 With regards to NE's concerns around the effectiveness of LEBs in reducing bycatch [REP2-082]<sup>4</sup>, the Secretary of State is aware that a research study undertaken by the Applicant into bycatch mitigation using LEBs in 22 fishing enterprises, concluded that the technology was effective in reducing guillemot bycatch [REP8-017]. He also notes that NE supported the LEB trial and agreed its theoretical merit [REP7-061] and acknowledged that further work may yield adequate information on efficacy in the post-consent period [REP7-102]. The Secretary of State considers that the Applicants supporting evidence (Guillemot and Razorbill Compensation Plan [REP5-026], Bycatch Reduction Ecological Evidence [APP-194], Bycatch Reduction Roadmap [REP5-028] and Bycatch Reduction Technology Selection Phase Summary [REP5-068]) demonstrates that this measure is technically feasible and deliverable. Having reviewed the responses to the consultation letters, the Secretary of State is content that the LEB measure is likely to be additional to the normal/ standard measures required for the designation, protection and management of protected sites under the Habitats Regulations.
- 5.75 The Secretary of State notes that NE welcomes the commitment that both predator eradication and bycatch measures will be delivered as a package, and he considers that this increases the confidence that the measures will be effective in compensating for the impacts to guillemot. The Secretary of State concludes that it is possible to secure a package of measures that would provide compensation for the effects of the Project on guillemot and ensure the overall coherence of the UK NSN. The HRA provides for conditions that are secured in the DCO. This includes conditions relating to the timetable for compensation measures to ensure that these are implemented prior to the commencement of any adverse effect.



## 6 Consideration of Compulsory Acquisition and Related Matters

- 6.1 For the reasons set out in Chapter 14 of the ExA Report the ExA has reached the view that development consent should not be granted and consequently reported that it was unable to conclude that there would be a compelling case in the public interest as is required to be demonstrated to justify the inclusion of Compulsory Acquisition (“CA”) and Temporary Possession (“TP”) powers [ER 15.7.3]. However, the ExA recognises that the Secretary of State may conclude that development consent should be granted and the ExA has therefore considered the case for CA and TP on that basis; apart from the matters on which the ExA has recommended against the Application, the ExA notes that it would have otherwise concluded that a compelling case had been made in the public interest for the Order to include CA and TP powers to facilitate the Proposed Development [ER 15.7.5].
- 6.2 The Application includes proposals for the CA of the freehold of land, the CA of rights (and restrictions) over land and TP of land [ER 15.1.1].
- 6.3 The Planning Act 2008, together with related case-law and guidance, provides that CA can only be granted if certain conditions are met. Under section 122 of the Planning Act 2008 CA 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 2008; and
  - there is a compelling case in the public interest.
- 6.4 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 CA 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 is satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the interference with the human rights of those affected.

### *Need*

- 6.5 The ExA accepts that there is a national need for the provision of low carbon energy infrastructure that would help the UK achieve its net zero targets (EN-1 paragraph 2.2.1), and the ExA is satisfied that the provision of up to 180 WTGs and the means to connect them to the National Grid would contribute significantly to providing a source of clean energy and enabling a shift away from fossil-fuel based energy generation [ER 15.7.6]. The Secretary of State concludes that, even if the number of WTGs were to be reduced due to the impact of the protective provisions for the benefit of NEO, the licensee of the Kumutage Field, and Harbour Energy, the Proposed Development would still

provide a significant contribution to meeting the urgent need for low-carbon, renewable energy.

#### *Alternatives*

- 6.6 In Chapter 3 of the ES, the Applicant advised it had considered all reasonable alternatives [ER 15.6.7]. The ExA is satisfied that the land for which CA powers is being sought is no more than would be reasonably be required to enable the construction, operation and maintenance of the Proposed Development, and the ExA therefore accept that there would be no alternative to using CA powers, where required [ER 15.7.12].

#### *Adequacy of funding*

- 6.7 The Funding Statement sets out how the Applicant proposes to fund the scheme [ER 15.6.10]. The ExA is satisfied that the Applicant is of sound financial standing [ER 15.7.14], and considers that the Applicant would be able to meet the liabilities arising from the acquisition of land and rights and compensation claims [ER 15.7.16]. The ExA is satisfied that the Applicant would have access to the necessary funds and the project would be implemented if granted consent [ER 15.12.17].

#### *Justification for seeking powers of CA*

- 6.8 The ExA was satisfied with the explanations provided by the Applicant as to why the amount of land was needed [ER 15.7.18], and the ExA is satisfied that in the event of the grant of a development consent, there would be the need to acquire the rights and interests in the Order Land and the powers sought in the Order would be required to implement the Proposed Development [ER 15.7.19]. The ExA is satisfied that the Application aligns with the Government's strategic policy objectives set out in NPS EN-1, EN-3 and EN-5 to meet the UK's legal binding target to cut greenhouse gas emissions by moving away from fossil fuels, and the urgent need for new (and particularly low carbon) energy NSIPs to be brought forward [ER 15.7.21]. The ExA agrees with the Applicant's assessment of the need for and wider public benefits of the scheme [ER 15.7.22] and, in accordance with NPS EN-1, is satisfied with the Applicant's case that the public benefits associated with the construction and operation of the Proposed Development would be clear, substantial and compelling [ER 15.7.23].
- 6.9 The ExA concludes that the requirements of section 122(2)(a) and (b) of PA2008 are met [ER 15.12.3]. The ExA considers there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plan – Onshore and is satisfied that the Proposed Development would comply with section 122(3) of the PA2008 [ER 15.12.7]. The ExA notes that since the recommended Order is in the form of a statutory instrument, it considers that it would comply with section 117(4) of the PA2008 and further notes that no provision would contravene the provisions of section 126 of the PA2008 which relate to the modification or exclusion of compensation provision [ER 15.12.8].

#### *Consideration of objections and issues*

- 6.10 Four objections regarding the request to grant CA and TP powers were submitted to the ExA [ER 15.8.1]; this represents only a portion of the 360 plots of land that would be affected but the ExA has nevertheless applied the relevant tests to the whole of the land that would be subject to powers of CA and TP in reaching its overall conclusions [ER 15.8.2]. The ExA notes that the Applicant has responded to CA objections throughout the course of the examination and has actively pursued discussions with objectors to seek to address specific issues and concerns [ER 15.8.3]. The ExA notes many of the issues raised by objectors have been considered as part of the ExA's consideration of onshore planning issues and chapter 15 of the ExA report therefore focuses on objections in relation to the application for the grant of CA or TP powers [ER 15.8.5].
- 6.11 The objection from Dee Atkinson and Harrison on behalf of Mr C W Foreman and Mrs C F Foreman relates to CA of plots 94 to 107 where the Applicant was seeking the permanent acquisition of new rights and the imposition of restrictions and TP [ER 15.8.6]. Mr and Mrs Foreman subsequently entered into an option agreement with the Applicant and withdrew their objections to the Proposed Development [ER 15.8.7] and the ExA considers that there are no remaining objections to the CA and TP of these plots and in any event the public benefits of the Proposed Development would outweigh any private loss. The ExA recommends the grant of CA and TP powers sought in relation to these plots [ER 15.8.8].
- 6.12 ERYC in its RR raised concerns regarding the potential conflict between the Proposed Development and the East Riding of Yorkshire Council (A164 Castle Hill Roundabout to A164 Regiment Roundabout) Compulsory Purchase Order (CPO) 2021 and Side Order 2021 [ER 15.8.10], but subsequently ERYC wrote to advise that it had completed a co-operation agreement and as a result it withdrew its objection to the overlap between the Proposed Development and ERYC's Jock's Lodge Scheme and associated CPO and Side Road Order [ER 15.8.12]. The ExA therefore considers that there are no remaining objections to the CA and TP of these plots and in any event the public benefits that would be delivered by the Proposed Development would outweigh any private loss, and recommends the grant of CA and TP powers in relation to the plots in which ERYC have an interest [ER 15.8.13].
- 6.13 Mr and Mrs Goatley submitted an RR objecting to CA of plots 148 to 150 [ER 15.8.14], but subsequently sold their property to ERYC [ER 15.8.15], and the ExA therefore considers that there are no remaining objections to the CA and TP of these plots and in any event the public benefits of the Proposed Development would outweigh any loss, and recommends the grant of TP and CA sought in relation to these plots [ER 15.8.17].
- 6.14 An RR was submitted by Savills on behalf of the Hotham Family Trust [ER 15.8.18], but at Deadline 5 the ExA were advised that the Hotham Family Trust wished to withdraw its representation [ER 15.8.20]. The ExA therefore consider that there are no remaining objections to the CA and TP of these plots and in any event the public benefits of the Proposed Development would

outweigh any loss and recommends the grant of CA and TP powers in relation to these plots [ER 15.8.21].

- 6.15 The ExA received three RRs from parties classified as Category 3 by the Applicant in the Book of Reference, and these parties objected on a range of issues arising from the construction and implementation of the scheme, with the concerns mainly relating to noise and disturbance from the OnSS, the location of the OnSS access road, and the impacts of construction [ER 15.8.22]. The ExA notes that, for the reasons set out in Chapter 12 of its Report, it is satisfied that noise and disturbance from the OnSS and vehicles using the OnSS access road would not adversely affect the living conditions of the occupants of neighbouring residential properties. Furthermore, the ExA notes that Requirements 7 and 22 of the recommended DCO would control operational noise from Work No. 7 [ER 15.8.23]. The ExA notes that it has endeavoured throughout the Examination to ensure that adequate safeguards would be in place to manage construction impacts and this is reflected by the measures contained within the oCoCP, the oCTMP and the commitments register [ER 15.8.24] and that the remedies of making a claim under s10 of the Compulsory Purchase Act 1965 or in due course under Part 1 of the Land Compensation Act 1973 would also be available to these objectors [ER 15.8.25].

*Statutory undertakers' ("SU") land – section 127 and 138 of the PA2008*

- 6.16 The Applicant's draft Order proposes to acquire rights in land from a number of SUs, many of which submitted RRs in respect of the Proposed Development [ER 15.6.19]. By the end of the examination, all SUs who had submitted an RR or Written Representation ("WR"), with the exception of the EA, had withdrawn their objections to the Application [ER 15.6.20]. The ExA considers that consequently, section 127 of the PA2008 applies [ER 15.6.20].
- 6.17 The EA has an interest in 25 plots; the Applicant is seeking the permanent acquisition of new rights and the imposition of restrictions for all plots, except for four of those 25 where only TP is sought [ER 15.8.30]. As the EA's objection to the CA and TP of its land has not been withdrawn, the tests of s127 and s138 of the PA2008 apply. The ExA is satisfied that the wording of the protective provisions contained within Part 5 of Schedule 9 of the final draft Order is acceptable to the EA and would form an appropriate form of protection for it; as a result, the ExA is satisfied that the rights sought by the Applicant could be acquired without serious detriment to the carrying out of the EAs undertakings. Therefore, the ExA considers that in relation to the EA the tests in s127(5) and s138(4) would be met. Consequently, the CA and TP of these plots is recommended [ER 15.8.34].
- 6.18 The ExA is satisfied that the relevant provisions contained within Schedule 9 of the recommended Order would ensure that an appropriate degree of protection would be given to the affected undertakers, such that there would be no serious detriment to the carrying out of those organisations' undertakings, and the ExA is satisfied that the interference with apparatus and extinguishment of rights would be necessary and proportionate for the purposes of carrying out the development [ER 15.8.38]. With reference to

section 138(4) of the PA2008, the ExA recommends that the Order may include provision for the extinguishment of the relevant rights or the removal of the relevant apparatus [ER 15.8.39].

- 6.19 In the case of the remaining section 127 representation, the ExA concludes that the Secretary of State can be satisfied that there would be no serious detriment caused by carrying on the undertaking of the SU in question should the CA or TP sought be granted, and in the case of section 138 the ExA is satisfied that the extinguishment of the relevant rights, or the removal of the relevant apparatus, would be necessary for the carrying out of the development to which the Order relates [ER 15.12.9]. The Secretary of State notes that, in response to his letter of 16 December 2022, the EA confirmed on 13 January 2023 that it has withdrawn its objection and that it has no outstanding areas of concern or disagreement with the Applicant.

#### *Special category land*

- 6.20 Part 5 of the Book of Reference identified 10 plots which were special category land [ER15.4.6]. The ExA is satisfied that in each case where the Applicant is seeking the CA of open space the land that would be required, when burdened with the Order right, would be no less advantageous than it was before for the persons to whom it is vested; other persons, if any entitled to rights of common or other rights; and the public [ER 15.8.40]. The ExA is therefore satisfied that the exemptions provided by section 132(3) of the PA2008 would apply and the ExA recommends that Special Parliamentary Procedure should not apply to this land and that the recommended Order should record the Secretary of State's satisfaction on this matter as required by section 131(3) and section 132(2) of the PA2008 [ER 15.8.41]. The ExA considers that the tests in section 131(2) and section 132(3) of the PA2008 are satisfied [ER 15.12.10].

#### *Crown land*

- 6.21 Part 4 of the Book of Reference ("BoR") lists the six plots of land in which a Crown interest exists [ER 15.6.35]. At the end of the examination, the Applicant advised that the section 135 consent was still under negotiation with the Crown Estate on a couple of outstanding points, and therefore the Applicant had not secured the consent of the appropriate Crown Authority for the CA of Crown land [ER 15.6.37]. No objections to the CA of this land have been received from the Crown Estate [ER 15.8.43]. Given the lack of alternatives the ExA considers that the project would not be able to proceed without access to Crown land [ER 15.8.45].
- 6.22 The ExA recommends that, as consent has not been secured from the relevant Crown Authority, the Secretary of State must ask the Applicant for an update on the progress with these negotiations, and notes that the Secretary of State cannot make the Order without the necessary consent from the Crown in respect of CA and TP, and further that if this is not forthcoming, then as the scheme could not proceed without this land the Secretary of State must withhold consent for the Proposed Development [ER 15.8.46, ER 15.12.11].

- 6.23 The ExA also recommends that the Secretary of State request that the Applicant update the entries in the Book of Reference in relation to the plots where the Crown has an interest, to amend the reference to “the Queen’s” to “the King’s” [ER 15.12.13].
- 6.24 The Secretary of State sought further information in relation to the matters set out in paragraphs 6.22 and 6.23 above in his letter of 16 December 2022. On 13 January 2023, the Crown Estate Commissioners confirmed their consent to the compulsory acquisition of the third party interests in Plots 1-6 for the purpose of section 135(1) of the Act. On 13 January 2023, the Applicant provided an updated Book of Reference which amended references to “the Queen’s” to “the King’s”.

*Temporary possession*

- 6.25 The ExA is satisfied that the relevant land would be required for these purposes and is necessary to enable implementation of the Proposed Development. The ExA notes that the exercise of these rights of temporary possession and use of land would infringe Convention rights under the Human Rights Act 1998, but considers that they are proportionate in relation to the scheme, legitimate and in the public interest, and further notes that there is provision within the recommended Order for compensation to be paid to affected persons and the significant public benefits that the scheme would deliver would, in the opinion of the ExA, outweigh any adverse impacts on those affected [ER 15.9.2]. The ExA is satisfied that, except in relation to Crown land, the TP powers sought are necessary to facilitate the implementation of the Proposed Development and that adequate compensation provisions are included in the recommended Order [ER 15.12.14].

*Associated development*

- 6.26 The ExA is of the view that the land required for this Associated Development can therefore, in principle, be compulsorily acquired pursuant to section 122(2) of the PA2008 [ER 15.2.2].

*Time limit for exercise of authority to acquire land compulsorily*

- 6.27 The Secretary of State notes that article 20 allows for a period of seven years for the exercise of power of compulsory acquisition and for the commencement of development. The Applicant’s Explanatory Memorandum advises that this is because of the complexity of the Proposed Development. The Secretary of State agrees that seven years is an appropriate timeframe given the Proposed Development.

*ExA recommendation*

- 6.28 In the event that the Secretary of State is minded to grant development consent for the Proposed Development, the ExA recommends that:
- The BoR be updated to reflect the potential change in ownership of Crown land – as noted above, an updated BoR was provided by the Applicant;

- CA included in the recommended Order be granted, subject to matters set out below in relation to Crown land;
- the TP included in the recommended Order be granted, subject to the matters set out below in relation to Crown land;
- the CA and TP sought in relation of Crown land should not be granted until the necessary consent from the appropriate Crown authority, namely the Crown Estate, has been obtained – as noted above, the Crown Estate Commissioners provided consent for these powers;
- The CA of Statutory Undertakers land and rights over land included in the recommended Order be granted;
- The CA of rights over open space, subject to the matters set out above in relation to Crown land, included in the recommended Order be granted;
- The SoS can be satisfied that the Order land in relation to open space land, when burdened with the Order right would be no less advantageous than it was before to persons in whom it is vested, other persons and the public; and
- The powers included in the recommended Order to apply, modify or exclude a statutory provision be granted.

*Secretary of State's conclusion on the powers for CA and TP sought*

- 6.29 The Secretary of State, noting the responses received from the Crown Estate Commissioners, the Applicant, and the EA, in response to his letter of 16 December 2022, concludes that the relevant legislation and guidance relating to CA and TP has been followed by the Applicant, and that there is a compelling case in the public interest to grant CA and TP powers to facilitate the Proposed Development.

## **7 The Secretary of State's Consideration of the Case for Development Consent and the Planning Balance**

- 7.1 Where NPSs have effect, section 104 the Planning Act 2008 requires the Secretary of State to have regard to a range of policy considerations including the NPS, development plans, and LIRs prepared by local planning authorities in reaching a decision.
- 7.2 All nationally significant energy infrastructure developments will have some potentially adverse impacts. The ExA notes that the Proposed Development meets specific relevant Government policy as set out in NPS EN-1, EN-3 and EN-5, and that it is broadly compliant with the MPS [ER 14.3.64].
- 7.3 The ExA is satisfied that the Proposed Development would contribute to the established need for new low carbon energy sources, and that these energy-related benefits and resultant conformity with the NPSs weigh heavily in favour of the Proposed Development. The ExA ascribes the need case positive weight in the planning balance [ER 14.3.2 et seq.]. The Secretary of State notes the ExA's conclusions in respect of need and ascribes significant positive weight to the need case in the overall planning balance.

- 7.4 With regard to alternatives, the ExA is satisfied that the Proposed Development has met the requirements regarding alternatives as prescribed in the EIA Regulations [ER 14.3.4]. The Secretary of State agrees with the ExA's conclusions on this matter and ascribes it neutral weight in the planning balance.
- 7.5 The ExA ascribes matters relating to marine and coastal processes and sediments limited negative weight in the planning balance [ER 14.3.8], noting that there are gaps and uncertainties in the understanding of the science behind some of the important features such as the Flamborough Front [ER 13.3.5], but that the controls and monitoring to be put in place would provide adequate safeguards to allow the Proposed Development to go ahead in accordance with adopted policy in relation to marine and coastal processes and sediment matters [ER 14.3.7]. The Secretary of State, noting that the proposed gravity base structures have been removed, agrees with the ExA's conclusions and ascribes this matter limited negative weight in the planning balance.
- 7.6 With regard to other marine ecology matters, the ExA ascribes this matter limited negative weight in the planning balance [ER 14.3.19], noting that the mitigation and controls that would be put in place would provide sufficient safeguards to allow the Proposed Development to go ahead without significant effects, and in accordance with adopted policy relating to the marine environment [ER 14.3.18], with the exception of potential impacts of underwater noise and the resettling of disturbed sediments on spawning herring, and the consequent implications for the population and indirect impacts on the marine mammals and seabirds that prey on herring [ER 14.3.19]. The Secretary of State agrees with the ExA's conclusions on this matter and ascribes it limited negative weight in the planning balance.
- 7.7 The ExA ascribes limited negative weight to the matter of commercial fisheries and fishing [ER 14.3.26]. The Secretary of State agrees with the ExA's conclusions on this matter and ascribes it limited negative weight in the planning balance.
- 7.8 The ExA ascribes limited negative weight to the matter of traffic and transport (including PRoW) [ER 14.3.46], noting that the main traffic impacts would arise during the construction phase, with the decommissioning phase having impacts that would be at worst equal to construction, and that the operational phase would generate minimal additional traffic, and that impacts on PRoWs would mainly be temporary and would not be significantly detrimental [ER 14.3.45]. The Secretary of State agrees with the ExA's conclusions on this matter and ascribes it limited negative weight in the planning balance.
- 7.9 With regard to onshore ecology, the ExA notes that the Proposed Development would have the potential to give rise to minor adverse impacts on bat species, badger, great crested newt, water vole and breeding and overwintering birds, primarily during the construction phase [ER 14.3.55]. The ExA notes that the proposed mitigation and enhancement measures, including BNG, would be appropriate and of positive benefit [ER 14.3.55]. Taking this into account, the ExA considers that the overall effects on onshore



ecology would be of limited negative weight in the short-term due to construction operations, but that the proposed enhancement and BNG measures would give rise to positive benefits of limited positive weight in the longer term [ER 12.8.50]. Taken together, the ExA concludes that the Proposed Development would avoid significant harm to onshore ecological interests and would accord with NPS EN-1 in this regard, and taking account the mitigation and enhancement measures secured, concludes that it would not weigh against the Proposed Development [ER 12.8.50, 14.3.56]. The Secretary of State agrees with the ExA's conclusions on this matter and ascribes it neutral weight in the planning balance.

- 7.10 With regard to aviation and radar [ER 14.3.24], offshore historic environment [ER 14.3.30], other offshore infrastructure [ER 14.3.31], shipping and marine navigation [ER 14.3.34], seascape and visual resources [ER 14.3.37], geology and ground conditions [ER 14.3.48], onshore water environment [ER 14.3.52], land use [ER 14.3.54], noise and vibration [ER 14.3.59], and air quality and health [ER 14.3.62] would not weigh against the case for the Proposed Development. The Secretary of State agrees with the ExA's conclusions on these matters, and ascribes them neutral weight in the planning balance.
- 7.11 The ExA concludes that matters related to onshore historic environment would not weigh against the case for the Proposed Development [ER 14.3.50]. However, the Secretary of State ascribes the temporary impact on the setting of the Beverley Sanctuary Limit Stone moderate negative weight in the planning balance.
- 7.12 With regard to landscape and visual matters including good design, the ExA concludes that, with the additional wording proposed to Requirement 7 [ER 14.3.42], it is satisfied that the Proposed Development would meet the criteria for good design set out in EN-1 and would therefore not weigh against the Proposed Development [ER 14.3.43]. The Secretary of State has included an amended version of the wording proposed by the ExA for Requirement 7, and therefore agrees with the ExA's conclusions on this matter and ascribes it neutral weight in the planning balance.
- 7.13 The ExA does not consider it is appropriate to weigh the matter of the Endurance Store for or against the case for the Proposed Development [ER 14.3.22]. The Secretary of State has considered the ExA's conclusions on this matter, and noting that agreement has now been reached on this matter, ascribes this matter neutral weight in the planning balance. Similarly, the Secretary of State ascribes neutral weight to the matters of protective provisions for the benefit of Harbour, for the benefit of NEO, and for the benefit of Bridge.
- 7.14 The ExA concludes that an AEoI cannot be ruled out and that insufficient evidence had been submitted by the close of the Examination to demonstrate that adequate compensatory measures could be provided, but recognises that the Secretary of State may reach a different conclusion, or that additional information may become available after the close of Examination, such that HRA matters do not preclude making of the Order [ER 14.3.1]. The Secretary of State has concluded that it is possible to secure a package of measures

that would provide compensation for the effects of the Proposed Development and to ensure the overall coherence of the UK NSN (see section 5 above and the HRA that has been published alongside this letter).

- 7.15 The ExA is satisfied that, with the exception of the marine and coastal ornithology matters, the identified adverse effects would be mitigated as far as reasonably possible, and the ExA is content that the appropriate measures to do this could be properly secured through the recommended Order and the associated control documents, such that the identified adverse impacts would be appropriately managed [ER 14.3.71].
- 7.16 With regard to impacts on marine and coastal ornithology, the ExA concludes that this matter weighs heavily against the case for the Proposed Development [ER 14.3.14]. The Secretary of State notes the new information provided by the Applicant since the close of the Examination and ascribes the adverse impacts significant negative weight against the case for the Proposed Development.
- 7.17 In applying the overall planning balance, the ExA considers that, excepting marine and coastal ornithology matters, the large-scale generation of renewable energy and the contribution that the revised Proposed Development, incorporating the Exclusion Area, would make to meeting the relevant Government climate change and net zero targets substantially outweigh the limited harms that have been set out above. The Proposed Development would be in accordance with NPS EN-1, NPS EN-3 and NPS EN-5, and accordingly, s104(7) of the PA2008 would not apply [ER 14.3.72]. The ExA notes that, therefore, should the Secretary of State conclude that the HRA considerations are not a barrier to development, the ExA concludes that for the reasons set out and summarised above, development consent should be granted, subject to the inclusion of the changes to the Order recommended by the ExA [ER 14.3.73].
- 7.18 Having considered the overall planning balance, and having concluded that it is possible to secure a package of measures that would provide compensation for the effects of the Proposed Development and to ensure the overall coherence of the UK NSN, the Secretary of State concludes that the significant benefits associated with the Proposed Development in contributing to the urgent need for low-carbon energy infrastructure of the type proposed outweigh the harms identified, and therefore concludes that consent should be granted to the Proposed Development.

## **8 Other Matters**

### Human Rights Act 1998

- 8.1 Having regard to the relevant provision of the Human Rights Act, the ExA has considered the individual rights that would be interfered with, and the submissions made by the APs in this regard, and is satisfied that: in relation to Article 1 of the First Protocol that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest; in relation to Article 6 the ExA is satisfied that all objections which were submitted to the Examination have either been resolved with the

Objector, or the Objector has had the opportunity to present their case to the ExA in writing and/ or at the CAH; and in relation to Article 8 the interference is in accordance with the law and is necessary in the interests of the economic well-being of the country [ER 15.10.4, ER 15.12.15].

- 8.2 The Secretary of State has considered the potential infringement of human rights in relation to the proposed Development. He has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

### Equality Act 2010

- 8.3 The Equality Act 2010 includes a Public Sector Equality Duty (“PSED”). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships<sup>2</sup>; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.4 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. The Act does not prohibit detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.5 The ExA considered potential equality impacts during the Examination and within the report. With regard to the Equality Act 2010, the ExA considers that there is no evidence that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not, or any indication that allowing the application would have any harmful equality implications [ER 15.11.4, ER 15.12.16].
- 8.6 The Secretary of State is confident that, in taking his decision, he has paid due regard to the above aims when considering the potential impacts of granting the Application and can conclude that the Hornsea Project Four Offshore Wind Farm will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that neither the grant nor refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

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<sup>2</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

## Natural Environment and Rural Communities Act 2006

- 8.7 The Secretary of State has considered his duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required 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.
- 8.8 The Secretary of State is of the view that the ExA Report, together with the environmental impact analysis, including the Habitats Regulations Assessment, considers biodiversity sufficiently to inform him in this respect. In reaching his decision to grant consent to the Proposed Development the Secretary of State has had due regard to conserving biodiversity.

## Climate Change Act and the Net Zero Target

- 8.9 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 this advice, Government announced a new carbon reduction 'net zero' target for 2050, and amended the Climate Change Act 2008 to require the UK to reduce net carbon emissions from 80% to 100% below the 1990 baseline by 2050. The Secretary of State notes the Energy White Paper (December 2020) states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by the Hornsea Project Four Offshore Wind Farm which is, therefore, still in accordance with the National Policy Statements. Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments. The Secretary of State does not, therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.

## The British Energy Security Strategy ("BESS") and Powering up Britain

- 8.10 The Secretary of State notes the support for offshore wind in the BESS, which notes the ambition that by 2030 over half British renewable generation capacity will be from wind, and the commitment in Powering Up Britain (published March 2023) to accelerate the deployment of renewables, including offshore wind.

## **9 Modifications to the draft Order**

- 9.1 Following consideration of the draft Order provided by the ExA the Secretary of State has made the following modifications to the draft Order:
- Amendment to the definition of independent review panel to include approval of the relevant planning authority;

- 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 including the 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.
  - The removal of the reference to “other suitable land” in article 15(1). The explanatory memorandum suggests that this is drafted in accordance with the model provisions. No explanation or reasoning is provided for the inclusion of any suitable land in connection with the discharge of water.
  - In article 26 removal of the amendments to Schedule 2A of the Compulsory Purchase Act 1965 as a new Schedule 2A is inserted in accordance with Schedule 7;
  - An amendment to article 28(4) to remove the term “temporary”. It appears that only those works specified in subparagraphs 28(4)(a)-(e) are to remain after the undertaker gives up temporary possession and the amendment confirms this.
  - In article 40, removal of requirement 29 from the procedure in Part 4 of Schedule 1 as this requirement to be discharged by the Secretary of State;
  - Amendments to Schedule 1 to reflect the revisions to the design parameters of the project made by the applicant following examination and in particular the removal of gravity based structures.
  - Amendments to Parts 6, 10 and 11 of Schedule 9 (protective provisions) to take account of the Secretary of State’s decisions set out in this letter in relation to the protective provisions to be provided for other marine operators;
  - 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 in respect of kittiwake and guillemot.
- 9.2 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 confirm with the current practice for statutory instruments and changes in the interests of clarity and consistency.

## **10 Challenge to decision**

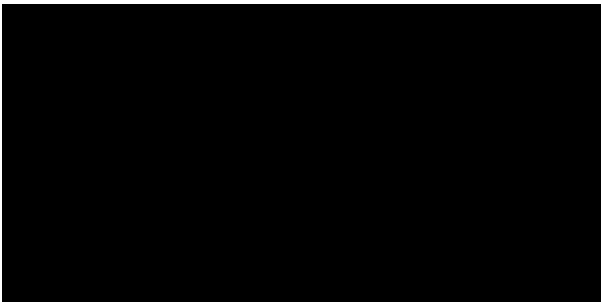
- 10.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

## **11 Publicity for decision**

- 11.1 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.
- 11.2 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



**David Wagstaff**

Deputy Director, Energy Infrastructure Planning  
Department for Energy Security and Net Zero

## ANNEX

### 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/yorkshire-and-the-humber/hornsea-project-four-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).**

## Glossary of Terms

| Abbreviation | Meaning                                                           |
|--------------|-------------------------------------------------------------------|
| AfL          | Agreement for Lease                                               |
| BoR          | Book of Reference                                                 |
| CA           | Compulsory Acquisition                                            |
| DCO          | Development Consent Order                                         |
| EA           | Environment Agency                                                |
| EBI          | Energy Balancing Infrastructure                                   |
| ECC          | Export Cable Corridor                                             |
| EIA          | Environmental Impact Assessment                                   |
| EMF          | Electro Magnetic Fields                                           |
| EOEIMP       | East Offshore and East Inshore Marine Plans                       |
| ERYC         | East Riding Yorkshire Council                                     |
| ES           | Environmental Statement                                           |
| ExA          | Examining Authority                                               |
| FCLP         | Fisheries Coexistence and Liaison Plan                            |
| HDD          | Horizontal Directional Drilling                                   |
| HE           | Historic England                                                  |
| HRA          | Habitats Regulations Assessment                                   |
| HVAC         | High Voltage Alternating Current                                  |
| HVDC         | High Voltage Direct Current                                       |
| JLIS         | Jock's Lodge Improvement Screen                                   |
| LIR          | Local Impact Report                                               |
| LPC          | Lockington Parish Council                                         |
| MCA          | Maritime and Coastguard Agency                                    |
| MCAA         | Marine and Coastal Access Act 2009                                |
| MCZ          | Marine Conservation Zone                                          |
| MMO          | Marine management Organisation                                    |
| MMV          | Measurement, Monitoring and Verification                          |
| MPS          | UK Marine Policy Statement                                        |
| NE           | Natural England                                                   |
| NEP          | Northern Endurance Partnership                                    |
| NGET         | National Grid Electricity Transmission                            |
| NPPF         | National Planning Policy Framework                                |
| NPPG         | National Planning Practice Guidance                               |
| NPS EN-1     | Overarching National Policy Statement for Energy                  |
| NPS EN-3     | National Policy Statement for Renewable Energy Infrastructure     |
| NPS EN-5     | National Policy Statement for Electricity Networks Infrastructure |
| NR           | Network Rail Infrastructure Limited                               |
| oCTMP        | Outline Construction Traffic Management Plan                      |
| OnSS         | Onshore Substation                                                |
| oPRoWMP      | Outline Public Right of Way Management Plan                       |
| PLC          | Primary Logistics Compound                                        |
| PRoW         | Public Rights of Way                                              |
| PSED         | Public Sector Equality Duty                                       |
| RR           | Relevant Representation                                           |
| SM           | Scheduled Monument                                                |
| SPA          | Special Protection Area                                           |
| SoCG         | Statement of Common Ground                                        |
| SoR          | Statement of Reasons                                              |
| SSSI         | Site of Special Scientific Interest                               |
| SU           | Statutory Undertakers                                             |
| UKCoS        | UK Chamber of Shipping                                            |
| WMS          | Written Ministerial Statement                                     |
| WSI          | Written Scheme of Investigation                                   |
| WTG          | Wind Turbine Generator                                            |