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All Interested Parties, Affected
Persons, Category 3 Persons and
Other Persons

Your Ref:

Our Ref:

EN010109

Date:

17 April 2023

Dear Sir/ Madam

Planning Act 2008 (as amended) (PA2008) – Section 89, The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) – Rules 9 and 17, and The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations) – Regulations 4 to 19

Application by Equinor New Energy Limited for an Order Granting Development Consent for the Sheringham Shoal Offshore Wind Farm Extension Project and Dudgeon Offshore Wind Farm Extension Project

Notification of Procedural Decision

I am writing to advise you of a Procedural Decision taken by the Examining Authority (ExA) following the Applicant's formal change request submitted on 11 April 2023 [AS-045 to AS-065]. The ExA's decision on the change request, brief background to, and the ExA's reasoning for, the Procedural Decision are set out below.

1. Background

The Applicant has proposed changes to the application, and provided commentary detailing these changes as follows [AS-045]:

- Amend the Order limits for the application to include additional land where the cable corridor passes through the Food Enterprise Park (FEP) Phase 2 site;
- Reduce the Order limits slightly in the northern part of the FEP Phase 2 site;
- Utilise the existing FEP access road and remove the separate new access that was proposed through to the FEP Phase 2 site; and



- Include the option to use trenchless crossing under Church Lane to the south of the FEP Phase 2 site increasing the area of land over which rights are sought, which were previously subject to temporary possession only.

The Applicant has provided the rationale for the proposed changes [AS-065], accompanying Supplemental Environmental Information (SEI) material to support the change request [AS-063] and several documents that would be impacted by the proposed changes. The proposed changes would require amendments to the land affected by Compulsory Acquisition (CA) and these amendments have been incorporated into the updated versions of the Land Plans [AS-048], the Book of Reference (BoR) [AS-058] and the Statement of Reasons (SoR) [AS-061]. The Applicant has suggested an example timetable to enable the application along with the proposed changes to be considered within the Examination timetable.

The Applicant has provided its own assessment on the materiality of the proposed changes. The Applicant states that the proposed changes would include acquisition of Additional Land and as such in its view, they would be material. The Applicant also states that the changes are not of such a degree that they constitutes a materially different project from the one applied for.

Whether the changes proposed by the Applicant are material or non-material, will be determined by the ExA.

2. The ExA's Reasoning

The ExA in its considerations and in reaching its decision, has taken into account the [Guidance for the Examination of Applications for Development Consent](#) (published by the former Department for Communities and Local Government, March 2015) and the Planning Inspectorate's updated [Advice Note \(AN\) 16: Requests to Change Applications](#). These accept that Applicants may need to change elements of a proposal after an application has been accepted.

The ExA acknowledges that the requirement for the proposed changes has arisen as a result of collaborative discussions between the landowner of the FEP site and the Applicant with the aim of minimising the impact of the Proposed Development on the proposals for the development of the FEP site.

Regulation 4 of The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations) states the following:

Regulations 5 to 19 prescribe the procedure for the purposes of the condition in subsection (4) of section 123 (land to which authorisation of compulsory acquisition can relate) and apply where –

- (a) It is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of land; and*
(b) A person with an interest in the additional land does not consent to the inclusion of the provision.



The ExA has not received notice from any Affected Person confirming consent to the inclusion of additional land and therefore concludes that consent cannot be said to have been given. Accordingly, the CA Regulations are engaged. The ExA therefore directs the Applicant to carry out its duties under Regulations 7, 8 and 9 of the CA Regulations.

the ExA notes that there is no statutory requirement to consult on or publicise this SEI under The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) and that this is noted in AN 16. The ExA has had regard to the nature and scale of the proposed changes as set out in the material provided by the Applicant so far. The ExA has provisionally considered the environmental effects and finds that the environmental effects of the proposed changes have been covered adequately in the SEI and updated documents, in order to enable it to be Examined. The ExA notes that other documents would be updated by the Applicant. As such, the ExA has concluded that consultation on the SEI at this time is not required.

The ExA's own assessment is that in making this Procedural Decision at this time it allows sufficient opportunity during the Examination for all relevant Interested Parties to view the change, for representations to be made in relation to the change and for any representations to be taken into account by the ExA.

The ExA recognises that in considering whether or not to accept the proposed change for Examination, it needs to act reasonably and in accordance with the principles of natural justice. Applying the advice in AN 16, the ExA is content that there will be sufficient opportunity during the remaining Examination process for all relevant Interested Parties to view the changes, for representations to be made in relation to the changes, and for any representations to be taken into account by the ExA.

The ExA has considered the Applicant's Habitats Regulations Assessment (HRA) report and concludes that the proposed changes would not alter the outcome of the HRA.

Decision on Change to the Application

Given the Applicant's change request requires amendment to the Order limits for the application to include additional land where the cable corridor passes through the FEP Phase 2 site and reduces the extent of the Order limits in the northern part of the FEP Phase 2 site, the ExA considers that the proposed changes to the application do constitute a material change to the application. However, upon reviewing the evidence before it, giving consideration to the scale and extent of the proposed changes, and taking into account the SEI provided by the Applicant, the ExA does not consider the proposed changes to constitute a project, materially different to the project for which development consent was originally sought.



The ExA has decided to accept for Examination the Applicant's proposed changes to the application. In accordance with Regulation 6 of the CA Regulations, the ExA, on behalf of the Secretary of State (SoS) has decided to accept the proposed inclusion of additional land as part of the application.

This decision by the ExA does not imply any acceptance of the planning merits or evidence for the changes, the effects of which will be examined with the same rigour as the original Application.

The Procedural Decision to accept this change request is made on the basis that the additional processes associated with it can be completed in the required time prior to the close of the Examination. However, changes to the Examination Timetable would be likely required. Accommodating the proposed changes into the Examination Timetable would be reliant on the Applicant acting with urgency and providing the ExA with the Certificates of Compliance in line with Regulation 9 of the CA Regulations no later than noon 29 May 2023. The Applicant should note that this date is earlier than the date proposed in the example timetable [AS-045].

The ExA will issue an amended Examination Timetable, in line with Rule 8(3) of the EPR as soon as practicable after the receipt of the Certificates of Compliance from the Applicant. The Applicant would need to meet other deadlines in accordance with the revised Examination Timetable. If this is not achieved, then the ExA will not be in a position to take the change request into account in its recommendation report to the SoS as the Applicant will not have complied with the relevant statutory procedures.

In line with Rule 17 of the EPR, the ExA requests that the Applicant update all necessary documents which reflect this change request into the Examination by **Deadline 3, 2 May 2023**.

If you have any queries, please contact the Case Team using the details at the head of this letter.

Yours faithfully

Menaka Sahai

Lead Member of the Examining Authority

