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Ref: EN010109

Sarah Chandler  
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17 April 2024

Dear Ms Chandler,

## **PLANNING ACT 2008**

### **APPLICATION FOR DEVELOPMENT CONSENT FOR THE SHERINGHAM SHOAL AND DUDGEON OFFSHORE WIND FARM EXTENSION PROJECT**

#### **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 Examining Authority’s (“ExA”) report dated 17 October 2023. The ExA consisted of five examining inspectors, Menaka Sahai (lead panel member), Jonathan Manning, David Wallis, Rod MacArthur and Steven Rennie. The ExA conducted an Examination into the application submitted on 5 September 2022 (“the Application”) by Equinor New Energy Limited (“the Applicant”) for a Development Consent Order (“DCO”) (“the Order”) under section 37 of the Planning Act 2008 (“the PA2008”) for the Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects and associated development (“the Proposed Development”). The Application was accepted for Examination on 3 October 2022. The Examination began on 17 January 2023 and closed on 17 July 2023. The Secretary of State received the ExA’s Report on 17 October 2023.
- 1.2. On 09 January 2024 the Secretary of State issued a Written Ministerial Statement announcing that the statutory deadline for the decision had been reset to 17 April 2024. On 22 November 2023, a request for information was issued by the Secretary of State seeking information on several matters. On 23 January 2024 all interested parties were invited to comment on the information received.
- 1.3. The Order, as applied for, would grant development consent for the construction and operation of an array of up to 53 wind turbines and their foundations. The combined generating capacity of the Proposed Development would equate to 786 megawatts. Offshore, the Proposed Development would also comprise the construction of up to two offshore transformer substations, a marine connection to the shore, consisting of up to two subsea electrical circuits, an Export Cable Corridor to the proposed landfall at Weybourne

of up to 62 kilometres in length increasing by up to an additional 800 metres as it approaches landfall. At landfall, the offshore export cables would be joined to onshore export cables; the onshore cable corridor would be up to 60m wide with a working easement to either side of the cable corridor adding a total of up to 45m. The proposed permanent development area for the Onshore Substation would be located approximately 600m north of the village of Swainsthorpe with the nearest northeast corner approximately 250m south of the Norwich Main National Grid Electricity Transmission Plc 400 kilovolt substation.

- 1.4. The Applicant also seeks compulsory acquisition (“CA”) and temporary possession (“TP”) powers, set out in the draft Order submitted with Application.
- 1.5. Published alongside this letter on the Planning Inspectorate’s National Infrastructure Planning website<sup>1</sup> is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 5-29 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 30. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER \*.\*.”].

## **2. Summary of the ExA’s Report and Recommendation**

- 2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent as set out in the ExA Report [ER 4.2.3] are:

- Alternatives and Need;
- Benthic Ecology, Intertidal, Subtidal and Coastal Effects;
- Civil and Military Aviation;
- Construction Effects Offshore;
- Construction Effects Onshore;
- Commercial Fisheries and Fishing;
- Compulsory Acquisition (“CA”) and Temporary Possession (“TP”);
- Cumulative Effects;
- Design;
- Development Consent Order;
- Habitats and Ecology Offshore;
- Habitats and Ecology Onshore;
- Habitats Regulation Assessment;
- Historic Environment and Cultural Heritage;
- Land Use;
- Landscape and Visual Effects;
- Seascape and Visual Effects;
- Navigation and Shipping;
- Noise and Vibration;
- Oil, Gas and Other Offshore Infrastructure and Activities;
- Socio-economic Effects;
- Traffic and Transport; and

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<sup>1</sup> <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010109>

- Water Quality and Resources

2.2. The ExA recommended that the Secretary of State should refuse the application for development consent. The ExA's recommendation in paragraphs 30.4.1 and 30.4.2 (page 523 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 SoS does not make the Order for Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects.*

*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 Order, then the ExA recommends that the SoS should make the Order in the form recommended in the rDCO in Appendix D of this Recommendation Report, subject to the considerations set out here: (Table 12)”*

2.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendations.

### **3. Summary of the Secretary of State's Decision**

3.1. Section 104(2) of the 2008 Act requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement (“NPS”). Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply.

3.2. The Secretary of State has decided under section 114 of the 2008 Act **to make, with modifications, an Order granting consent for the proposals** in the Application. 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 (“the EIA Regulations”).

3.3. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

### **4. The Secretary of State's Consideration of the Application**

4.1. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination and responses to her consultation letters. 130 Relevant Representations (“RRs”) were made in respect of the Application [ER 2.3.22, 2.3.23]. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has had regard to Local Impact Reports (“LIRs”) submitted by the ExA from the following local authorities: Broadland District Council (“BDC”), East Suffolk Council (“ESC”), Norfolk County Council (“NCC”), North Norfolk District Council (“NNDC”) and South Norfolk Council (“SNC”), environmental information as defined in

regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act including relevant policy set out in the NPSs EN-1 and EN-3.

- 4.2. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. The ExA has referred to these 2011 NPSs as EN-1 and EN-3 and this letter refers to them in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. The ExA makes reference to the March 2023 draft NPSs ("dNPS") throughout the Examination and Report, with dNPS EN-1 and dNPS EN-4 considered important and relevant.
- 4.3. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("the 2024 NPSs"). The ExA did not consider the November 2023 versions, nor the 2024 NPSs, in their Report as they were designated following the close of the Examination. The transitional provisions included in the 2024 NPSs provide that these will have effect only in relation to those applications for development consent accepted for examination after the designation of those amendments. However, any such NPSs are potentially capable of being important and relevant considerations in the decision-making process. As such, the Secretary of State has had regard to the designated 2024 NPSs in reaching her decision but does not consider that there is anything contained within them that would lead her to reach a different conclusion on the Application than has been reached by relying on the 2011 NPSs. The Secretary of State has also had regard to the updated National Planning Policy Framework from December 2023 which was released after the close of the Examination and similarly finds that there is nothing which would lead her to reach a different conclusion.
- 4.4. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
  - a. Need – substantial positive weight [27.4.7]
  - b. Alternatives and Grid Connection – neutral [ER 5.5]
  - c. Design – neutral [ER 6.5.]
  - d. Offshore Ornithology – moderate negative weight [ER 7.5.]
  - e. Marine Mammals – minor negative weight [ER 8.5.]
  - f. Commercial Fisheries and Fishing – minor negative weight [ER 10.5.]
  - g. Coastal and Offshore Physical Processes - minor negative weight [ER 11.5.]
  - h. Construction Effects; Offshore – neutral [ER 15.5.].
  - i. Seascape and Visual Effects - minor negative weight [ER 17.5.]
  - j. Land Use – moderate negative weight [ER 20.5.]
  - k. Water Quality and Resources (including flood risk) – minor negative weight [ER 22.5.]
  - l. Landscape and Visual Effects – minor negative weight [ER 23.5.]
  - m. Construction Effects; Onshore – minor negative weight [ER 24.5.]
  - n. Socioeconomic Effects – moderate positive weight [ER 25.5.]
- 4.5. The paragraphs below set out the matters where the Secretary of State has further commentary and analysis to add beyond that set out in the ExA report, including those matters on which further information has been sought.

## The Need for the Development

- 4.6. The ExA stated that it was satisfied that in line with NPS EN1, the Applicant has demonstrated the need for the Proposed Development. The ExA recommends that the Secretary of State should give substantial weight to the contribution that all the development scenarios of the Proposed Development would make to satisfying the need for this type of energy infrastructure (NPS EN1, Paragraph 3.1.4). The ExA also noted that this presumption in favour of development for Offshore Wind Farms (“OWF”) as an energy type set out in NPS EN1, would therefore be engaged (NPS EN1, Paragraph 4.1.2) [ER 4.13.7].
- 4.7. The Secretary of State agrees with the ExA’s view and considers that the need for the Proposed Development is established and notes the contribution the Proposed Development would make to the established need and targets for renewable energy generation. The Secretary of State ascribes the need for the Proposed Development substantial positive weight in favour of making the Order. The Secretary of State does not consider that the imposition of an obstacle free zone to ensure appropriate navigational safety, which may reduce the flexibility of delivering Dudgeon Offshore Wind Farm Extension Project (“DEP”) and may compromise the quantum of wind turbine generators, has any impact on the delivery to meet the urgent need for the type of energy infrastructure that will be constructed as part of the Proposed Development. The imposition of an obstacle free zone to ensure navigational safety is discussed in more detail in the relevant section of this letter below.

## Subtidal and Intertidal Ecology

- 4.8. The Secretary of State agrees with the recommendations of the ExA [ER 9] for all subtidal and intertidal ecology matters but discusses below matters where further information was requested post-Examination.
- 4.9. With regards to post-consent monitoring and mitigation requirements to address effects of the Proposed Development on sensitive benthic habitats and species, Natural England (“NE”) were concerned that there was no requirement within the conditions for the Applicant, or regulatory authority, to take action should the monitoring highlight that the impact is significantly in excess of the impact assessed. NE advised that consideration should be given to amending the monitoring requirements to make it clear that, if identified impacts are in excess of those assessed, there is a need to provide a consideration of appropriate action that could be taken [RR-063]. Furthermore, NE stated that following monitoring if it is found that mitigation measures have been insufficient, then further measures and/or remediation may be required to ensure the Proposed Development remains beneficial to the environment [REP1-136].
- 4.10. The Marine Management Organisation (“MMO”) stated [REP8-092] that the draft Deemed Marine License (“dDML”) post-construction monitoring conditions would not bind the undertaker to take action should the monitoring highlight any particular impacts that need remediation or further mitigation works. For this to be secured in the dDML this would need to be included within the wording of each relevant condition. The MMO suggested wording to do so.
- 4.11. The Applicant considered [REP8-061] that any further amendments to the dDMLs are unnecessary or inappropriate and would not meet the tests for conditions as set out in NPS EN1 paragraph 4.1.7. The Applicant points out that measures may themselves require a

separate consent or agreement before they could be implemented. The Applicant states [REP7-065] that it would not necessarily be within the Applicant's power to immediately undertake such works and therefore it is not appropriate to seek to impose such a requirement through the dDML.

- 4.12. The ExA concluded that reasonable post-consent, pre-construction and operational monitoring of effects arising from the Proposed Development is proposed by the Applicant and secured by the Offshore In-Principle Monitoring Plan ("Offshore IPMP"). However, the ExA considered [ER 9.2.98 et seq.] there was no obligation on the Applicant, via its monitoring processes, to discuss with the relevant parties appropriate remedial or adaptive management measures. There is solely the commitment for further monitoring, which may not be sufficient. The ExA acknowledges that this further mitigation or remediation may require a separate consent or agreement before they could be implemented and therefore may not be in the Applicant's power to undertake such remedial works. However, the ExA does not consider this a reason for there to be no requirement for further mitigation or remediation if this is proved necessary. If the monitoring uncovered unforeseen issues, maybe worse than anticipated, then there needs to be a mechanism to ensure that this is remediated and/or mitigated. Including such a provision would compel the Applicant to design appropriate mitigation, in consultation with relevant stakeholders and seek necessary approvals. Without this provision the Applicant does not have to take any remediation action, and that is not acceptable to the ExA. Whilst the ExA acknowledge the Applicant may not be able to immediately undertake appropriate action, perhaps for reasons of needing a new Marine Licence, the only commitment secured is that of additional monitoring.
- 4.13. The ExA therefore considers, to strengthen the Offshore IPMP and provide reassurance that ongoing monitoring would contribute towards ongoing effective mitigation for offshore matters (considered here as relevant to intertidal and subtidal ecology, but also relevant to offshore ornithology), that an additional condition should be included in the dDMLs. The ExA recommended [ER 9.2.102 et seq.] that Condition 20 (schedules 10 and 11) and Condition 19 (schedules 12 and 13) of the dDMLs contained in the DCO contain a clause requiring adaptive management measures to be implemented, and that such clause to be consulted on with relevant bodies.

#### *The Secretary of State's Conclusion*

- 4.14. On 22 November 2023, the Secretary of State invited the MMO, NE and the Applicant to comment on the amendment as recommended by the ExA.
- 4.15. In response, the MMO and NE stated that they had consulted one another and jointly advised amendments to the ExA's proposed text, to recognise that determining significance can be subjective and that sometimes impacts are unforeseen:

*"(7) In the event that monitoring reports provided to the MMO under sub-paragraph (4), identifies impacts which are beyond those predicted within the Environmental Statement/Habitat Regulations Assessment, adaptive management/mitigation may be required. An adaptive management/mitigation plan to reduce effects to within what was predicted within the Environmental Statement/Habitat Regulations Assessment, unless otherwise agreed in writing by the MMO, must be submitted alongside the monitoring reports submitted under sub-paragraph (4), including timelines and associated monitoring to test effectiveness. This plan must be agreed with the MMO in consultation with the relevant Statutory Nature Conservation Bodies to reduce effects to an agreed suitable level for this*

*project. Any such agreed or approved adaptive management/mitigation should be implemented and monitored in full. In the event that this adaptive management/mitigation requires a separate consent, the Applicant shall apply for such consent."*

- 4.16. The MMO confirmed that this updated wording allowed the Applicant to provide potential solutions when reviewing the monitoring results to be discussed with the MMO and Statutory Nature Conservation Body ("SNCB") and ensures that all parties are clear on what is required if the monitoring shows higher impacts than predicted during the assessment stage.
- 4.17. In response to the letter of 22 November 2023, the Applicant reiterated [REP7-065] that a condition of such nature was unnecessary and unreasonable and considered that no clear explanation had been given by NE or MMO that would justify imposing this condition. Nevertheless, it proposed some minor amendments to the wording of the condition if the Secretary of State disagrees. In response to the Secretary of State's invitation for comments on 23 January 2024, NE referred the Applicant to their response to the Secretary of State of 20 December 2023 and [REP8-101], [REP5-090] and [REP1-136], where NE expressed its concerns and rationale was originally set out to secure a mechanism for adaptive monitoring and a require for remedial measures.
- 4.18. Whilst the Secretary of State notes the Applicants position that such a condition is unprecedented, she agrees with the ExA's recommendation and advice of NE and MMO that such a condition is reasonable and appropriate in this instance. The Secretary of State considers that the proposed monitoring in the Offshore IPMP is appropriate, and has adopted some amendments proposed by NE, MMO and the Applicant to Condition 20 (schedules 10 and 11) and Condition 19 (schedules 12 and 13) of the dDMLs accordingly.
- 4.19. The Secretary of State agrees with the recommendations of the ExA [ER 9.2.68 et seq.] regarding the likely effects of the Proposed Development's cable installation on the Cromer Shoal Chalk Beds Marine Conservation Zone ("the MCZ") and that section 126(7) of the Marine and Coastal Access Act 2009 is engaged. The Secretary of State agrees that there are no other means of proceeding with the proposed development which would create a substantially lower risk of hindering the achievement of the MCZ's conservation objectives and that the benefit to the public of proceeding with the proposed development clearly outweighs the risk of damage to the environment that will be created by proceeding with it. The Secretary of State has therefore considered the sufficiency of the necessary Measures of Equivalent Environmental Benefit ("MEEB") proposed by the Applicant. The Secretary of State notes the concerns raised by Norfolk Wildlife Trust that provision of new oyster beds would not provide equivalent ecological functions to the features of the MCZ. However, she has considered the advice from NE that, although it also had some concerns, together with the suggested conditions as to the timing of measures was largely supportive of the proposals. Taking this into account the Secretary of State is satisfied that the Applicant's proposals are sufficient for the undertaking of MEEB and the approval of a MEEB Implementation and Monitoring Plan ("MIMP") are adequately secured in the DCO Schedule 17 Part 4, including the suggested amendment to secure that the MIMP must be approved by the Secretary of State prior to the laying of cables within the MCZ, rather than before any cable protection is used as originally proposed by the Applicant.
- 4.20. The Secretary of State agrees with the recommendations of the ExA [ER 9] for all other subtidal and intertidal ecology matters not mentioned above and she agrees that such matters carry minor weight against making the Order.

## Marine Mammals

- 4.21. The Applicant assessed [APP-096] [APP-192] that cumulative underwater noise impacts during construction on harbour porpoise, grey seal and harbour seal would result in a major adverse impact. However, the Applicant submitted that through mitigation measures contained in both the outline Marine Mammal Mitigation Protocol (“MMMP”) [REP1-013] and the in-principle Site Integrity Plan (“SIP”) [APP-290] for the harbour porpoise feature of the Southern North Sea SAC (“SNS SAC”), disturbance would be reduced to minor adverse, non-significant levels. Condition 13(h) in Schedule 10 (and equivalent in Schedules 11-13) of the DCO secure that in the event that driven, or part-driven, pile foundations are proposed to be used, a MMMP in accordance with the outline MMMP, would be submitted six months prior to commencement of licensed activities. In addition, condition 14 of Schedule 10 (and equivalent) requires the provision of a SIP which accords with the principles of the in-principle SIP for approval, monitoring and enforcement by the MMO.
- 4.22. The aim of the SIP is to ensure that underwater noise within the SNS SAC is managed and aligned with guidance from the Joint Nature Conservation Committee, which advises that noise must not exclude harbour porpoise from more than 20% of the relevant area of the site in any given day, or an average of 10% of the relevant area of the site over a season. Whilst intended for the harbour porpoise feature of the SNS SAC, the SIP would inevitably be of benefit to the harbour porpoise population of the North Sea Management Unit reference population as well as other marine mammal species.
- 4.23. The MMO considered [REP3-133] that the Applicant’s SIP provided sufficient control over the timing and nature of noisy activities to ensure that the relevant in-combination disturbance impact thresholds for marine mammals would not be breached. However, NE expressed concerns about how the potential noise issues would be managed if multiple offshore construction projects were being constructed simultaneously. NE stated they had no confidence in the SIP process for several reasons, concluding that mitigation measures should be committed to now in principle, with the final SIP used to discount mitigation measures that are no longer needed [REP3-147, Q2.12.2.1]. Until the mechanism by which the SIPs will be managed, monitored and reviewed is developed, NE stated it is unable to advise that the Applicant’s approach is sufficient to address the cumulative impacts. Consequently, NE could not fully rule out the risk of an adverse effect on integrity on the SNS SAC. NE maintained this position at the end of the Examination [REP8-108]. appropriate and effective marine mammal mitigation based on the best available information and guidance at that time [REP4-031] [REP5-049].
- 4.24. The Applicant noted that NE’s concerns were not project-specific and more at an overarching level [REP8-052, RIESQ7, RIESQ17]. The Applicant contends that the approach of submitting an in-principle SIP and draft MMMP, to be followed with a final SIP closer to the time of construction, provides the framework to identify appropriate and effective marine mammal mitigation based on the best available information and guidance at that time [REP4-031] [REP5-049]. Regarding proven mitigation methods, the Applicant states that noise reduction measures, including bubble curtains, are included in the MMMP and SIP as a potential mitigation option. However, developing and finalising the MMMPs and SIP preconstruction would allow the Applicant to take into account the latest, most effective, suitable and proven mitigation measure. The Applicant noted that NE’s concerns were not project-specific and more at an overarching level [REP8-052, RIESQ7, RIESQ17].

- 4.25. The ExA considers that a suitable package of mitigation measures has been secured by the end of the Examination, including embedded mitigation such as soft start piling, the requirement for approval of the MMMP and SIP prior to construction and the ability to stop piling should monitoring indicate that assessed noise thresholds within the SNS SAC have been exceeded. The ExA concludes that while NE have outstanding concerns related to cumulative effects of noise on marine mammals, the management solutions are strategic and not within the scope of the Proposed Development or the Examination to resolve.
- 4.26. The Secretary of State notes her acceptance of the SIP as an appropriate mechanism to avoid and mitigate in-combination noise effects for previous Offshore Wind developments, but that this does not preclude her from reaching a different view on subsequent developments. In this instance, the Secretary of State notes the concerns of NE regarding the SIP, but she agrees with the Applicant and MMO that the measures within the in-principle SIP are appropriate and the SIP provides sufficient control over the timing and nature of noisy activities to ensure that the relevant in-combination disturbance impact thresholds for marine mammals would not be breached.
- 4.27. The Secretary of State agrees with the recommendations of the ExA [ER 8] for all other matters related to marine mammals not mentioned above and she agrees that such matters carry minor weight against making the Order.

#### Navigation and Shipping

- 4.28. The ExA held that there was no significant impact as a result of sea room or navigational safety other than at the Outer Dowsing Channel (“ODC”) [ER 12.5.1]. The ExA noted the advice from the Maritime Coastguard Agency (“MCA”) that a loss of sea room in the ODC would pose an unacceptable risk to navigational safety and concluded that the adverse effects would not be reduced to As Low As Reasonably Practicable (“ALARP”), even with the additional mitigation proposed within the Environmental Statement (“ES”) [ER 12.5.3], noting NPS EN-3 which states that wind farms should not be consented where they would pose an unacceptable risk to navigational safety after mitigation measures have been adopted [ER 12.5.2].
- 4.29. The Applicant submitted a Navigational Risk Assessment (“NRA”) to assess collision risk within the study area, which was defined as 10nm from the wind farm sites [ER 12.4.8]. Whilst the Applicant stated that there would be an increase in collision risk, based on the data and NRA this would be tolerable with mitigation and negative impacts ALARP [ER 12.4.9]. The Applicant also stated that any such restriction on buildable area within Dudgeon Extension Project North (“DEP-N”) would restrict the overall flexibility of delivering DEP, and that the ability of DEP-N to be developed on its own using the full quantum of wind turbine generators would be compromised [ER 12.4.27]. However, the MCA considered this collision risk as ‘unacceptable’ and requiring further mitigation [ER 12.4.25].
- 4.30. The MCA recommended an exclusion area to serve as an infrastructure and obstacle-free zone west of the line between the Dudgeon Cardinal Buoy and the Mid-Outer Dowsing Buoy, which they recommended would be required to reduce navigational risks to ALARP [ER 12.4.26], however the Applicant maintained that any further mitigation beyond the NRA was not necessary [ER 12.4.28].
- 4.31. The ExA was persuaded by the argument made by the MCA in their calculations of the loss of sea room, given that there is no mandatory clearance, and it would therefore be possible

for some vessels to travel closer to turbines, making the 1 nm clearance used in the modelling reasonable [ER 12.4.37].

- 4.32. The ExA recommended amending wording originally suggested by the MCA in their proposed mitigation with regards to coordinates and numbers in the plan, which the ExA included as Condition 25 of all the dDML Schedules as well as requirement in the Order at Requirement (“R”) 35 [ER 12.4.52] and [12.4.54]. The ExA concluded that the obstacle-free zone mitigation measure proposed by the MCA would be sufficient to reduce the effects to an acceptable level [ER 12.5.4] as a result accorded the effects of navigation and shipping as carrying a minor weight against the making of the Order [ER 12.5.9].

#### *The Secretary of State’s Conclusion*

- 4.33. The Secretary of State consulted the MCA and the Applicant on the wording and inclusion of Condition 25 and R35, and also asked for confirmation in respect of the correct coordinates to be referred to. The Applicant was also asked to submit revised Work Plans, which it submitted as requested.
- 4.34. The MCA confirmed that they reviewed the wording proposed for either a condition in the DML or a requirement in Schedule 2 of the Order and were satisfied having no preference whether it was included within the DML or Order. The MCA also confirmed that the proposed coordinates are correct.
- 4.35. The Applicant disagreed, maintaining that the MCA’s position regarding the controlling depth represents an error of fact which undermines, in their view, justification for the obstacle-free area.
- 4.36. The Secretary of State notes the disagreement from the Applicant and their view that the conclusions of the MCA are based on an error of fact which in their opinion, pulls into question the premise of the ‘no obstacle free zone’ area. The Applicant considered the 10m contour to be the controlling depth, which was also endorsed by Trinity House and the Chamber of Shipping. The MCA on the other hand disputed this, maintaining that the controlling depth in the ODC was 15.3m and that the existing sea room in the ODC is 3.1nm wide. The MCA maintained that vessels transiting the area do not use 10m as the controlling depth but instead use the 15m contour and therefore at the critical juncture west of DEP-N, the 15.3 wreck in the natural controlling depth. The MCA argues that the Applicant uses a very narrow and specific interpretation of the controlling depth definition, rather than the wider principle as applied in vessel navigation decision making and is ultimately based on an assessment where the traffic data is not considered.
- 4.37. In the MCA’s calculations, DEP-N would result in an approximate 1.3nm channel width remaining from 3.1nm existing, in what the MCA describe as an already high-risk area [ER 12.4.36], with this being a reduction calculated by the MCA of 58% from the current navigable sea room [ER 12.5.1]. As a result, the MCA deem that there is an increased collision risk of 23% [ER 12.5.1] due to the reduction of available sea room which they believe has not been adequately assessed within the NRA and no clear mitigation identified. It highlights that Trinity House deferred to the MCA at Deadline 5 of the Examination as the “primary navigational safety body, when defining shipping routes/lanes and assessing the appropriate widths of corridors...” [MCA Response - 20 Feb].

- 4.38. The Secretary of State notes the position of both the Applicant and MCA, but ultimately agrees with the MCA and the ExA's assessment that the ODC poses an adverse impact on navigational safety and considers that the mitigation proposed by the MCA is necessary. In reaching this conclusion, the Secretary of State has acknowledged the MCA's role as the primary navigational safety body, and its concerns related to Applicant's narrow and specific interpretation of the controlling depth definition rather than the wider principle as applied in vessel navigation decision making. The Secretary of State is content with the amended wording suggested by the ExA and the drafting of the Order reflects this.
- 4.39. The Secretary of State considers the MCA's calculations and arguments are robust and compelling and notes the MCA's response to the Secretary of State's 23 January 2024 invitation for comments, which in her view clarified the position of the MCA regarding the proposed no obstacle area and controlling depth; and sufficiently addressed the Applicant's claims of fundamental error of calculation against the MCA. In reaching this decision, the Secretary of State has also noted paragraph 2.6.165 of EN-3 which states that the Secretary of State should not consent applications which pose unacceptable risks to navigational safety after all possible mitigation measures have been considered.
- 4.40. The Secretary of State therefore agrees with the ExA that, with the inclusion of the additional requirement for the obstacle free zone, this matter should be ascribed minor negative weight against the making of the Order.

#### Civil and Military Aviation

- 4.41. The ExA concluded that with R28 in place and given the progress between the National Air Traffic Services ("NATS") on an agreement with the Applicant, there would be no adverse impact on civilian radar [ER 13.6.3].
- 4.42. The ExA also considered the need to raise the Air Traffic Control Surveillance Minimum Altitude Chart ("ATCSMAC") and Minimum Safe Altitude ("MSA") for Norwich Airport due to the heights of the wind turbine generators of the Proposed Development and concluded that as matters are agreed between the Applicant and Norwich Airport, with no objection from Norwich Airport, that this would carry a minor adverse effect to aviation [ER 13.6.4].

#### *Mitigation to address impacts on Primary Surveillance Radars*

- 4.43. The ExA noted that an objection from NATS remained at the end of the Examination [ER 13.5.12] on grounds of civilian aviation safety because mitigation had not been agreed with the Applicant in relation to primary radar at Claxby and Cromer. The ExA recommended that the Secretary of State should consult NATS on the status of its objection [ER 13.6.3].
- 4.44. On 20 December 2023, NATS confirmed that an agreement had been entered into with the Applicant for the agreement and implementation of suitable requirements in relation to the development, and as such are prepared to withdraw its objection to the application subject to the agreement.
- 4.45. On 21 December 2023, the Applicant also confirmed this and stated that a form of agreement to secure the necessary mitigation had been agreed between the parties and was subject only to execution and completion of that agreement.
- 4.46. The Secretary of State has included the agreed requirements as set out above as [Requirement 28] of the Order and therefore considers that there are no adverse impact on

civilian radar and that this matter is resolved. The Secretary of State ascribes this matter neutral weight in the planning balance.

#### *The ATCSMSAC / MSA minima for Norwich Airport*

- 4.47. The ExA concluded that the Proposed Development would not have significant impacts on the operation and safety of Norwich Airport but that there would be some minor adverse impact on civilian aviation through the potential need to increase the MSA and amend the ATCSMAC for Norwich Airport, particularly impacting helicopters that may need to divert around the wind farms in certain weather conditions [ER 13.6.6].

#### *The Secretary of State's Conclusions*

- 4.48. The ExA noted that, if the Secretary of State wished to explore this matter further, they may wish to undertake consultation with the Applicant, the Civil Aviation Authority and Norwich Airport [ER 13.6.5]. The Secretary of State, having considered the evidence, and with matters agreed between the Applicant and Norwich Airport and no objection from the Norwich Airport nor helicopter operators through the course of the Examination [ER 13.6.4], concluded that further information on this matter was not required.
- 4.49. The ExA concluded that the potential need to increase the MSA and amend the ATCSMAC for Norwich Airport result in the issues of civil and military aviation carrying a minor negative weight [ER 13.6.8]. The Secretary of State agrees with the ExA's conclusions and ascribes this matter minor negative weight against the Order being made.

#### Oil, Gas, and Other Offshore Infrastructure and Activities

- 4.50. The ExA noted that an obstacle free buffer around Perenco's Waveney Installation platform would be sufficient to minimise the adverse impacts and allow its continued viable operation until it is decommissioned [ER 14.5.1]. The ExA concluded that the Proposed Development accords with NPS EN-3, as it would not pose an unacceptable risk to safety, and the mitigation ensures that disruption and economic losses are minimised [ER 14.5.2].
- 4.51. Perenco had an outstanding objection at the close of the Examination which concerned helicopter and shipping access to existing oil and gas installation platforms. On 20 December 2023, Perenco confirmed that it had reached an agreed position on the drafting of Protective Provisions ("PP") with the Applicant. Perenco confirmed the withdrawal of its objection.

#### *The Secretary of State's Conclusion*

- 4.52. Noting that agreement has been reached between Perenco and the Applicant, the Secretary of State considers this matter resolved. The ExA concluded that the issues related to oil, gas, and other offshore infrastructure and activities should be ascribed a minor level of negative weight [ER 14.5.3]. The Secretary of State agrees with the ExA's conclusions and ascribes this matter minor negative weight against the Order being made.

#### Historic Environment and Cultural Heritage

- 4.53. The ExA concludes that the Proposed Development would not result in any harm to the historic environment [ER 16.5.1] and ascribes both offshore and onshore historic environment matters neutral weight in the planning balance [ER 16.5.8].

4.54. The Secretary of State has had regard to the test set out at Regulation 3(1) of the Infrastructure Planning Regulations 2010 which relates to impacts on listed buildings and to the desirability of preserving the relevant listed assets. In addition, the Secretary of State has noted paragraphs 5.9.27 and 5.9.28 of the 2024 NPS EN-1 which state that great weight should be given to the asset's conservation, and considerable importance and weight should be given to the desirability of preserving heritage assets. The Secretary of State has noted that SNC has highlighted three heritage assets where their setting would be impacted by the onshore substation element of the Proposed Development (Church of St Peter, Church of Holy Cross, and Church of St Mary Magdalene) [ER 16.3.3]. Further, the Secretary of State notes that SNC agree with the Applicant's assessment of negligible or non-significant impact on the setting of St Peter's Church and of no significant adverse impact on both Church of Holy Cross and Church of St Mary Magdalene [ER 16.3.4]. Noting these conclusions on impacts to the setting of these assets, the Secretary of State has ascribed this matter minor negative weight in the planning balance. However, the Secretary of State concludes that the urgent need and substantial public benefit of the Proposed Development outweighs these harms.

#### Seascape and Visual Effects

4.55. The ExA ascribed seascape and visual effects minor negative weight in the planning balance [ER 17.5.7]. The Secretary of State agrees with this conclusion and ascribes this matter minor negative weight. In reaching this conclusion, the Secretary of State has considered the impact on the Norfolk Coast Area of Outstanding Natural Beauty ("AoNB"). The Secretary of State also notes the duty under s245 of the Levelling-up and Regeneration Act 2023 for public bodies to further the purposes of AoNBs and also notes the 2024 NPS EN-1 in this regard. The Secretary of State is satisfied that all possible steps have been taken to further the relevant purposes of the AoNB and comply with the statutory duty in this particular case.

4.56. The Secretary of State concludes that the Applicant has taken reasonable precautions to avoid compromising the purpose of the designation. In reaching this conclusion, the Secretary of State has noted its additional assessment in relation to the impacts on the Norfolk Coast AoNB [ER 17.4.21] and the embedded mitigation it has proposed [ER 17.2.16].

#### Traffic and Transport

4.57. The Secretary of State notes that NNDC traffic and transport matters to NCC as the highway authority, and that there were no substantive comments relating to Traffic and Transport in any of the LIRs [18.3.2 et seq.]. The ExA noted that numerous parties raised concerns about the cumulative traffic and transport effects of the Proposed Development with other projects in the area [ER 18.4.63]. The Secretary of State also notes that concerns were raised by Weybourne Parish Council [18.4.33], Corpusty and Saxthorpe Parish Council [ER 18.4.38], Oulton Parish Council ("OPC") [ER 18.4.41], and Cawston Parish Council [ER 18.4.45] in respect of the Proposed Development's impacts on the local road network.

4.58. The ExA had concerns that the worst-case scenario had not been appropriately assessed in the ES. The ExA stated that the maximum trip generation figures set out in the Outline Construction Traffic Management Plan ("OCTMP") were robustly considered in the ES and that it is therefore absolutely imperative that the maximum trip limit is not exceeded to ensure that impacts do not occur above those assessed in the ES. The ExA has concluded that a

requirement secured within the Order as opposed to the OCTMP would provide a much greater level of security for local communities that no exceedances would occur and would make it an offence for the Applicant to do so. The ExA is of the view that Requirement 15 should include restrictions on trip generation figures [ER 18.4.14]. The ExA added without prejudice wording provided by the Applicant to paragraph 5 of Requirement 15 of the Order [ER 18.5.1].

- 4.59. The ExA noted that it did not see why further consultation would be necessary on the Applicant's proposed wording, but conversely noted that as this was provided on the last day of the Examination, Interested Parties ("IPs") did not have the opportunity to comment on it and that the Secretary of State may therefore wish to provide IPs with opportunity to comment on it [ER 18.4.15].
- 4.60. The Secretary of State invited NCC and National Highways to comment on the additional wording in her request for further information. On 6 December 2023 NCC, as the Local Highway Authority, stated that the Construction Management Plan ("CTMP") as currently written allows the Applicant to vary the figures contained within it but NCC noted that to place the matter beyond any doubt, the additional wording in paragraph 5 of Requirement 15 would be required.

#### *The Secretary of State's Conclusion*

- 4.61. Whilst the ExA acknowledges that the Applicant's proposed mitigation measures would reduce effects as far as reasonably possible, in accordance with NPS EN-1, it concluded that there would be residual adverse impacts, particularly on the local road network which would affect local communities and businesses [ER 18.5.4]. The ExA concluded that traffic and transport effects therefore carry moderate weight against the making of the Order [ER 18.5.5].
- 4.62. The Secretary of State notes the risk of adverse impacts posed if maximum vehicle limits are exceeded. The Secretary agrees with the position of the ExA and NCC in relation to the additional wording to be inserted in R15 and has therefore included the additional wording into the Order.
- 4.63. The Secretary of State agrees with the ExA that traffic and transport impacts should be ascribed moderate weight against the making of the Order.

#### Noise and Vibration

- 4.64. The ExA considered that noise and vibration effects from the Proposed Development were robustly assessed in line with NPS EN-1 [ER 19.5.1] and that trenchless crossing works at night should be restricted in R20 to emergency works unless in relation to the three crossings identified in the that require night-time works to meet statutory undertaker requirements [ER 19.5.3]. The ExA was satisfied that the works could be undertaken at the three crossings without significant noise effects following mitigation, for which the ExA provided wording in the Order [ER 19.5.3].
- 4.65. The ExA concluded that without the proposed amendments to R20, significant adverse residual effects could occur at a number of receptors and that this would not meet the requirements of NPS EN-1, and the effects of construction noise would carry moderate negative weight [ER 19.5.5]. The ExA noted that the Applicant and IPs had not seen the

wording and that the Secretary of State may wish to consult them before imposing the amendments [ER 19.4.49].

- 4.66. On 22 November 2023, the Secretary of State asked OPC, BDC, ESC, NCC, NNDC, and SNC to comment on the wording.
- 4.67. On 6 December 2023, ESC and NCC confirmed that they had no significant comments to make. On 14 December 2023, NNDC stated that they are content with the current controls and noise mitigation measures within the Outline Code of Construction Practice, and as such would not be seeking to request further requirements. On 15 December 2023, OPC endorsed the view of restricting night-time working to the three locations and expressed their concern with the building of the solar park at Oulton. On 20 December 2023, BDC and SNC together stated that as the Applicant is unable to undertake out of hours work without the permission of the Local Authority (through a Section 61 application), further restrictions on out of hours works are not required.

#### *The Secretary of State's Conclusion*

- 4.68. The Secretary of State has noted the views of the IPs listed above. The Secretary of State agrees that the ExA's proposed wording in relation to R20 of the Order is appropriate and has included the ExA's proposed wording in the Order.
- 4.69. The ExA concluded that the effects of construction noise carried minor weight with the proposed amendments to R20 [ER 19.5.5]. The Secretary of State agrees with this weighting and ascribes this matter minor negative weight against the making of the Order.

#### Onshore Habitats and Ecology

- 4.70. The Secretary of State notes that disagreement between the Applicant and Natural England regarding appropriate mitigation for impacts on Pink-footed Goose ("PFG") remained at the close of Examination. The Secretary of State agrees with the recommendations of the ExA [ER 21] for all onshore habitats and ecology matters and she agrees that such matters carry neutral weight in making the Order. The Secretary of State's conclusions regarding the ExA's proposed amendment to the DCO to secure a standalone mitigation plan and impacts on PFG of the North Norfolk Coast SPA ("NNC SPA") are presented in the Habitats Regulations Assessment ("HRA"), published alongside this letter.

### **5. Habitats Regulations Assessment (HRA)**

- 5.1. The Secretary of State's HRA is published alongside this letter. The paragraphs below summarise the key conclusions of, and must be read alongside, the HRA, which sets out in full the Secretary of State's detailed consideration of these matters.
- 5.2. The Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. 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"). They 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 ("NSN").

- 5.3. 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 UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as “protected sites”).
- 5.4. Regulation 63 of the Habitats Regulations 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).”*

- 5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects (“LSE”) cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment (“AA”) addressing the implications for the protected site in view of its Conservation Objectives.
- 5.6. Where an adverse effect on the integrity (“AEoI”) of the site cannot be ruled out beyond all reasonable scientific doubt, regulations 64 and 68 of the Habitats Regulations provide for the possibility of a derogation 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 to protected sites;
  - there are imperative reasons of overriding public interest (“IROPI”) for the plan or project to proceed; and
  - compensatory measures are secured to ensure that the overall coherence of the NSN is maintained.
- 5.7. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites unless he chooses to continue to consider the derogation tests as above. The complete process of assessment is commonly referred to as a HRA.
- 5.8. The ExA considered that there was sufficient information before the Secretary of State to enable her to undertake an AA and to apply the derogation tests of the Habitats Regulations of alternative solutions and IROPI in order to fulfil her duties under the requirements of the Habitats Regulations.

- 5.9. The Secretary of State has carefully considered the information presented during the Examination, including the Report on the Implications for European Sites (“RIES”), the ES, representations made by IPs, the ExA’s Report and all representations received in response to the consultation letters. She considers that the Proposed Development has the potential to have an LSE on 51 protected sites when considered alone and in-combination with other plans or projects.
- 5.10. 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 AEoI of the identified protected sites. The Secretary of State has considered all information available to him including the recommendations of the ExA, the advice of NE as the SNCB, the views of all other IPs such as the Royal Society for the Protection of Birds (“RSPB”), the Applicant’s case and all responses to his consultation letters.

#### *Appropriate Assessment Conclusion*

- 5.11. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of the protected sites and where relevant, the measures in place to avoid or reduce potential adverse effects secured in the DCO and DML, there would not be any implications for the achievement of site conservation objectives and therefore AEoI can be excluded beyond reasonable scientific doubt for the majority of protected sites for which LSE cannot be excluded.
- 5.12. However, the Secretary of State agrees with the ExA, in accordance with the advice of NE, that AEoI cannot be ruled out beyond reasonable scientific doubt in relation to:
- collision mortality of kittiwake of the Flamborough and Filey Coast SPA (“FFC SPA”), in combination with other projects;
  - displacement and disturbance mortality of guillemot of the FFC SPA, in combination with other projects; and
  - collision mortality of sandwich tern of the NNC SPA and Greater Wash SPA (“GW SPA”), in combination with other projects.
- 5.13. The Secretary of State has not identified any further mitigation measures that could reasonably be imposed which would avoid or mitigate the potential AEoI identified and has therefore proceeded to consider the derogation provisions of the Habitats Regulation.

#### Derogation Provisions

- 5.14. The Secretary of State has considered the Proposed Development in the context of Regulations 64 and 68 of the Habitats Regulations to determine whether it can be consented. Consent may only be given where no alternative solutions to the project are available which would meet the project objectives and are less damaging to the affected protected site, where there is IROPI, and where regulation 68 (compensatory measures) is satisfied. Regulation 64 allows for the consenting of a project even though it would cause an AEoI of a protected site if it is required for IROPI. Regulation 68 of the Habitats Regulations requires the appropriate authority to secure any necessary compensatory measures to ensure that the overall coherence of NSN is protected.

- 5.15. In accordance with relevant guidance, the Secretary of State 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 NSN is protected.

### Alternative Solutions

- 5.16. The objectives for the Proposed Development as set out by the Applicant, are:
- **Decarbonisation:** To generate low carbon electricity from an offshore wind farm by 2030 in support of the UK target to generate 50 gigawatts of offshore wind by 2030 and associated carbon reduction targets.
  - **Security of supply:** To export electricity to the UK National Grid to support UK commitments for offshore wind generation and security of supply.
  - **Optimisation:** To co-ordinate and optimise generation and export capacity with the constraints of available sites and onshore transmission infrastructure whilst delivering project skills, employment and investment benefits in the Norfolk area.
- 5.17. As set out in the HRA, the Secretary of State does not consider that the development of alternative forms of energy generation would 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 Offshore Wind projects.
- 5.18. Following a review of the information submitted by the Applicant and the recommendation of the ExA and having identified the objectives of the Project and considered all alternative solutions to fulfil these objectives, the Secretary of State is satisfied that no feasible alternative solutions are available that would meet the Project objectives with an appreciable reduction in predicted impacts on protected sites.

### IROPI

- 5.19. A development having an AEoI on a protected site may only proceed (subject to a positive conclusion on alternatives and provision of any necessary compensation) if the project must be carried out for IROPI. The parameters of IROPI are:
- **Imperative** – urgency and importance: There would usually be urgency to the objective(s), and it must be considered "indispensable" or "essential" (i.e. imperative). In practical terms, this can be evidenced where the objective falls within a framework for one or more of the following;
    - (i) actions or policies aiming to protect fundamental values for citizens' life (health, safety, environment);
    - (ii) fundamental policies for the State and the Society; or
    - (iii) activities of an economic or social nature, fulfilling specific obligations of public service.
  - **Public interest:** The interest must be a public rather than a solely private interest (although a private interest can coincide with delivery of a public objective).

- **Long-term:** The interest would generally be long-term; short-term interests are unlikely to be regarded as overriding because the conservation objectives of protected sites are long term interests.
- **Overriding:** The imperative need in the public interest of the development must outweigh the harm, or risk of harm, to the integrity of the protected site which is predicted by the AA.

5.20. The absence of priority habitats and species allows the Secretary of State to consider benefits of a social and economic nature.

5.21. The Secretary of State agrees with the ExA and the Applicant and considers that imperative reasons in the public interest for the Proposed Development to proceed are clearly established, especially the contribution it would make towards renewable electricity generation and ensuring the security of electricity supply from a domestically generated source. The Secretary of State also considers that such imperative and long-term need in the public interest for the Proposed Development clearly outweighs the predicted harm to the integrity of the protected sites, both when considering the mortality levels of bird species predicted by modelling preferred by the Secretary of State and the maximum range of predicted mortality impacts presented by the Applicant and NE [ER 26.10.15] [APP-059] [REP8-038].

## Compensatory Measures

### *Strategic Compensatory Measures*

5.22. The Secretary of State agrees with the Applicant and NE that strategic compensation represents the best option for delivering compensation for impacts of OWFs. Specifically, the Applicant makes the case that increases in prey availability would likely be a highly effective compensatory measure for sandwich terns, kittiwakes and auk species of the GW SPA, NNC SPA and FFC SPA. The Secretary of State considers that the Applicant makes a strong case and reasonable attempt at quantifying the potential benefits of doing so for these species. The Secretary of State recognises the need for strategic compensation and it has in-principle support of the SNCBs and Non-Governmental Organisations. However, neither the MRF nor any other appropriate vehicle for strategic compensation is yet in place. The Secretary of State agrees with the ExA, NE, MMO and RSPB that she cannot yet solely rely on strategic compensation to effectively compensate for the impacts of the Project and project-led measures are therefore required at this time. Nevertheless, she has included provisions in the DCO which would allow the Applicant to utilise strategic compensation in place of project-led measures in the future, if agreed by the Secretary of State at that time.

### *Kittiwake and Sandwich Tern*

5.23. At the beginning of the Examination, the Applicant submitted a package of compensatory measures for the sandwich tern feature of the NNC and GW SPAs [APP-069, APP-070, APP-071] and for the kittiwake feature of FFC SPA [APP-072, APP-073]. These measures are secured through Schedule 17 of the DCO.

5.24. For kittiwake, the Applicant proposes to provide enhancements to an existing artificial nesting structure at Saltmeadows, Gateshead, which is owned by the Local Planning Authority, Gateshead Council. 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 and Regulations 64 and 68 of the Habitats Regulations. Having made amendments, she considers that Schedule 17 Part 2 adequately secures the further work required to progress the proposed compensatory measure, including the approval of a Compensation Implementation and Monitoring Plan (“CIMP”).

5.25. For sandwich tern, the Applicant proposes:

- creation of a new habitat at Loch Ryan in Scotland, comprising a new inland lagoon for nesting and predator prevention measures; and
- a programme of research and predator control measures at Blakeney Point in the NNC SPA.

5.26. Having sought further information post-Examination and amending DCO Schedule 17 Part 2, the Secretary of State is satisfied that the necessary compensatory measures can be secured and delivered to protect the coherence of UK NSN for sandwich tern as required by Regulations 29 and 36 of the Offshore Habitats Regulations and Regulations 64 and 68 of the Habitats Regulations. She considers that Schedule 17 Part 1 adequately secures the further work required to progress the proposed compensatory measure, including the approval of a CIMP.

#### *Guillemot*

5.27. While the Applicant maintained throughout the Examination that AEoI on the guillemot feature of FFC SPA could be excluded, it provided a without-prejudice set of compensatory measures. This includes the provision of wording [REP8-008] to be inserted as Part 3 within Schedule 17 of the DCO. The final set of compensatory measures proposed are outlined in the Appendix 4 - Guillemot and Razorbill Compensation Document (Revision D) [REP7-020] (the guillemot CMD). An outline guillemot CIMP was submitted [REP5-018].

5.28. For guillemot, the Applicant proposes:

- bycatch reduction using Looming Eye Buoys (“LEBs”) (project-led or in collaboration with other OWF developers); or
- predator eradication at a breeding colony (Channel Islands, in collaboration with other OWF developers only).

5.29. Having considered the advice of NE and other IPs and the Applicants position, the Secretary of State considers that the Applicants responses to the concerns of NE and the RSPB (summarised in Table 11-1 of the guillemot CMD revision E) regarding the LEB measure are reasonable and that the Applicant has adequately quantified the scale of guillemot bycatch in the southwest, the scale of compensation required to be delivered to maintain the coherence of the NSN and describing the path to implementation of trials and ultimately the LEBs. The Secretary of State also notes that NE supports ongoing LEB trials, agree its theoretical merit and acknowledged that further work may yield adequate information on efficacy in the post-consent period. The Secretary of State considers that the Applicants supporting evidence (Appendix 4 - Guillemot and Razorbill Compensation Document (Revision D) [REP7-020, revision E68], Annex 1C - Initial Review of Compensatory Measures for Gannet Guillemot and Razorbill [APP-067] and Annex 4B - Auk Bycatch Reduction Feasibility Statement [REP3-023]) demonstrates that this measure is technically feasible and deliverable and the Secretary of State considers the measures to have a

reasonable prospect of success given the number of guillemot for which compensation is required. 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.

- 5.30. Nevertheless, the Secretary of State agrees with NE, that given the current uncertainty, it is necessary to ensure that any implementation plan contains a clear commitment to adaptive management, which would if needed have to include different kinds of, or locations of measures, and also for the plan to set targets that would trigger adaptive management should they not be met. The Secretary of State considers that the mechanism secured in Schedule 17 Part 3 adequately secures the further work required to progress the proposed compensatory measure, including the approval of a CIMP which must include further detail on the adaptive management measures and success criteria. For the avoidance of doubt, the Secretary of State would expect further information to be provided in the guillemot CIMP as required by Schedule 17 Part 3 paragraph 26 (e), before being satisfied to approve the CIMP post-consent. The Secretary of State has made a number of amendments to the DCO. This includes clarifying the role of the Guillemot Compensation Steering Group (“GCSG”) in advising the Secretary of State on the suitability of the proposed measures post-consent.
- 5.31. Overall, having reviewed the information provided during the Examination, the additional information provided post-Examination and the responses of the consultees with regards to the compensation measures proposed for guillemot, the Secretary of State is satisfied that the necessary compensatory measures can be secured and delivered to protect the coherence of UK NSN for guillemot as required by 64 and 68 of the Habitats Regulations.

#### The Secretary of State’s Conclusion on the HRA

- 5.32. An AEoI of the FFC SPA, GW SPA and NNC SPA cannot be excluded beyond reasonable scientific doubt. There are no feasible alternative solutions that would meet the objectives of the Proposed Development with an appreciable reduction in impacts on the NSN sites. There are clearly imperative reasons in the public interest for the Proposed Development to proceed despite the predicted harm to the UK NSN. The Secretary of State is satisfied that a package of compensatory measures to ensure that the overall coherence of the UK NSN is maintained can be secured and delivered with regards to kittiwake and guillemot of the FFC SPA and sandwich tern of the GW SPA and NNC SPA. The Secretary of State notes concerns of IPs and the ExA regarding the effectiveness of the proposed compensation measures for sandwich tern and guillemot; however, having reviewed the information provided by the Applicant she is confident that, along with the monitoring and adaptive measures that have been proposed, the measures have a reasonable chance of compensating for the effects of the project. To provide further reassurance, the Secretary of State has included conditions within the DCO, including to ensure that the measures for guillemot must be implemented at least 1 year before commencement of operation of the turbine in the event that LEBs are implemented and that the measures for sandwich tern are implemented at least 2 years prior to commencement of operation. Further amendments ensure that an appropriate mechanism for ongoing monitoring and adaptive management is secured to ensure that the predicted impact is fully compensated.

## **6. Compulsory Acquisition (“CA”)**

- 6.1. The ExA has reached the view that development consent should be refused on the basis of its findings on the HRA and without a recommendation for development consent, the case

for CA cannot therefore be justified [ER 28.1.1]. However, the ExA recognises that the Secretary of State may conclude differently and has therefore considered CA matters in the event that the Secretary of State is minded to grant development consent, noting that the case for CA and TP must be examined in accordance with the PA2008 [ER 28.1.2].

- 6.2. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers for TP only, for TP with acquisition of permanent rights, and for TP with Freehold Acquisition [ER 28.4.3]. The ExA notes the various development scenarios and that the draft Order would grant consent for all Development Scenarios, with CA Powers granted for the full area within the Order limits for the onshore substation and related works [ER 28.4.11].
- 6.3. The Secretary of State notes that article 18 allows for a period of seven years for the exercise of power of compulsory acquisition from the commencement of development. The Applicant's Explanatory Memorandum advises that this is because of the combined nature and scale of the two projects that form the Proposed Development. The Secretary of State agrees that seven years is an appropriate timeframe given the Proposed Development.
- 6.4. The PA2008, together with related case-law and guidance, provides that CA can only be granted if certain conditions are met. Under section 122 of the PA2008 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 PA2008; and
  - there is a compelling case in the public interest.
- 6.5. 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.
- 6.6. The ExA concludes that the Applicant's approach to exercising CA powers is sound [ER 28.6.12]. The ExA has taken into account concerns raised by all Affected Parties and is satisfied that the issues have been thoroughly examined and concludes that the identified adverse effects would be necessary to deliver the Proposed Development and would be mitigated to any possible extent [ER 28.7.15].

#### *National Trust Land - Weybourne Woods*

- 6.7. The ExA noted that the National Trust ("NT") had some outstanding concerns with the potential impact of the Proposed Development on the archaeology of the woodland area

known as Weybourne Woods, and therefore objected to the Order and the CA of land held 'inalienably' by the NT [ER 28.8.22, 28.8.23].

- 6.8. The ExA noted that as NT's objection to the CA of land for the Proposed Development had not been withdrawn, the CA of the NT land would be subject to special parliamentary procedures given the statutory position set out in section 130 of the PA2008 [ER 28.8.26]. The ExA recommended that the Secretary of State may wish to seek an update from the Applicant and NT to confirm whether or not the objection had been withdrawn [ER 28.8.27].
- 6.9. In response to the Secretary of State's request for information, NT confirmed on 20 December 2023 that it had agreed a way forward in principle that will ultimately allow the withdrawal of its objection.
- 6.10. On 21 December 2023, the Applicant noted NT's submission and held that that it fairly reflected their position at that time and hoped that a resolution would be reached by early January.
- 6.11. On 21 February 2024, the NT confirmed the withdrawal of its objection to the Application, noting that it had executed an Option Agreement with the Applicant.
- 6.12. The Secretary of State considers that as the objection has been officially withdrawn, no further action is required and the matter is considered resolved.

#### *Crown Estate Consent*

- 6.13. The ExA considered that due to an absence of requisite consents from the relevant Crown Authorities at the Secretary of State for Defence and Secretary of State at Transport, the Proposed Development was not deliverable to the extent assessed in the ES without the relevant plots of land [ER 28.8.8].
- 6.14. The Secretary of State sought confirmation from the Applicant on whether consents had been obtained from the relevant Crown Authorities for the Crown Land affected by the Proposed Development.
- 6.15. On 21 December 2023, the Applicant confirmed that it had been in discussions with the Secretary of State for Defence and obtained s135 consent in respect of the following plots of land: 01-002, 01-003, 01-005, 01-006, 01-007, 01-008, 01-011, 01-012, 01-013, 01-014, 01-015, 01-016, 01-017, 01-018, 01-019, 01-020, 01-021, 01-022, 01-023, 01-024, 01-026, 01-027, 01-028, 01-029, 01-030, 01-031, 01-032, 01-033, 01-034, 01-035 and 01-037 of land. The Applicant has confirmed that the Secretary of State for Defence has no further interests in the land.
- 6.16. The Applicant also confirmed that it is satisfied the Secretary of State for Transport has not retained an interest in plots 16-014, 16-015, 16-017, 28-002, 28-004, 28-005, 28-006, 28-007, 28-008, 28-009, 28-010, 35-002, 35-009, 35-010 and 35-011 as previously identified in their Book of Reference and on the Crown Land Plan. The Applicant therefore updated the Book of Reference, and no section 135 consent is required from the Secretary of State for the Department for Transport for the aforementioned plots of land.

#### *Public Open Space*

- 6.17. Section 132(3) of the PA2008 requires that the open space land affected by CA rights sought in the Order should be no less advantageous to the public than it was before. The ExA is satisfied that the effects of the Proposed Development on public open space would be temporary and short term only and concludes that the test set out in section 132(3) of the PA2008 is satisfied [ER 28.8.21].

#### *Statutory Undertakers ("SUs" Land)*

- 6.18. The following SUs did not make representations to the Examination and the Applicant confirmed that they would rely on standard provisions included in the Order at Schedule 14: Centrica; TC Dudgeon OFTO PLC; Dudgeon Offshore Wind Limited; Scira Offshore Energy Limited; Open Reach; Energis Communications Limited; and Vodafone [ER 28.9.2]. Frontier Power on behalf of Blue Transmission Sheringham Shoal submitted an RR, but later wrote to confirm withdrawal of the RR [ER 28.9.3]. Whilst no representations were submitted, the Applicant advised negotiations were ongoing with Shell UK Limited and Harbour Energy [ER 28.9.4]. The Applicant also confirmed that negotiations were ongoing with Independent Oil and Gas in respect of helicopter access to the Blythe platform [ER 28.9.5].
- 6.19. The ExA identified unresolved matters for National Gas Transmission, National Grid Electricity Transmission PLC, National Highways, National Rail, NCC, Orsted in relation to Hornsea Three, Orsted in relation to Hornsea Four, and Perenco [ER 28.9.10]. On 22 November 2023, the Secretary of State issued an information request to these parties seeking updates on the PPs. The outcome of that information request is detailed in section 9 of this decision letter below.

#### *Funding*

- 6.20. The ExA concludes that there is no reason to believe that there would not be the financial resources to fund the Proposed Development, whatever scenario is taken forward, or that CA liabilities could not be funded, and further that Article 40 of the draft Order further provides reassurance to the ExA that the funding would be in place to pay compensation where necessary [ER 28.11.11].

#### *Human Rights*

- 6.21. The ExA's conclusion in respect of Article 1 of the HRA1998 is that the purpose for which the CA of land is being sought is legitimate and sufficient to justify interfering with the human rights of those with an interest in the land affected [ER 28.13.7]. In respect of Article 6, the ExA concludes that the process of Examination, mean that those whose rights may be affected have been given access to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [ER 28.13.8].

#### *ExA conclusion with regard to section 122 and overall conclusion*

- 6.22. The ExA concludes, with regard to s122(3) of the PA2008, that should the Secretary of State disagree with the ExA's findings in relation to the HRA, then the private loss would be necessary, justified, proportionate and mitigated as far as possible and that consequently the interference with the human rights of individuals would be for a legitimate purpose, proportionate and justified in the public interest [ER 28.14.19]. The ExA is also satisfied that there is no evidence that the Proposed Development would not accord with the Equality Act 2010 [ER 28.14.19]. Taking these factors together, subject to resolution of outstanding objections from SUs and the NT, securing consent from all Crown Authorities, and only

subject to the Order being made, the SoS can be satisfied that there is a compelling case in the public interest for the CA and other powers sought in respect of the Order land, and the ExA concludes that the Proposed Development would comply with s122(3) of the PA2008 [ER 28.14.20].

### *The Secretary of State's Conclusion*

- 6.23. The Secretary of State is content with the updates provided by the Applicant and considers the matter resolved with regards to obtaining Crown Estate consent for the relevant plots of land.
- 6.24. The Secretary of State is content with the updates provided by the Applicant and relevant IPs and thereby considers that matters related to PPs have been satisfactorily resolved.
- 6.25. The Secretary of State 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.
- 6.26. The Secretary of State, noting the responses received to her information requests, 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. Secretary of State's Consideration of the Planning Balance and Conclusions**

- 7.1. The Secretary of State acknowledges the ExA's recommendation that the Application should be refused.
- 7.2. All Nationally Significant Infrastructure Projects will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed by the ExA as having not breached NPS EN-1 and NPS EN-3 or those contained in the January 2024 NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.
- 7.3. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the issues summarised at paragraph 4.4 of this letter. The Secretary of State attributes the need for the development substantial positive weight in the planning balance.
- 7.4. With regard to the following matters, the Secretary of State has noted the information received in response to her information request, and has ascribed these matters the following weightings:
  - Subtidal and Intertidal Ecology - minor negative weight;
  - Navigation – minor negative weight;
  - Civil and Military Aviation – minor negative weight;
  - Oil, Gas, and other Offshore Infrastructure and Activities – minor negative weight;
  - Traffic and Transport – moderate negative weight;
  - Noise and Vibration – minor negative weight;
  - Onshore Habitats and Ecology – neutral weight.

- 7.5. With regard to the historic environment and cultural heritage, the Secretary of State has ascribed this matter minor negative weight in the planning balance but concludes that the harms are outweighed by the public benefits of the Proposed Development.
- 7.6. With regard to seascape and visual effects, the Secretary of State has ascribed this matter minor negative weight in the planning balance, noting the Applicant has taken reasonable precautions to avoid compromising the purpose of the designation of the Norfolk Coast AONB.
- 7.7. With regards to the HRA, the Secretary of State disagrees with the ExA's conclusions. 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).
- 7.8. For the reasons given in this letter, the Secretary of State concludes that the benefits of the Proposed Development outweigh its adverse impacts **and that the requirements of the Habitats Regulations are met.**
- 7.9. The Secretary of State therefore concludes that development consent should be **granted** for the Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Project. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by BDC, ESC, NCC, NNDC and SNC, the NPSs, draft NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the PA2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

## 8. Other Matters

### Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships<sup>2</sup>; pregnancy and maternity; religion and belief; and race.
- 8.2. 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. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

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

- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.
- 8.4. The Secretary of State is confident that, in taking the recommended decision, she has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not 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.

#### Natural Environment and Rural Communities Act 2006

- 8.5. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 8.6. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment, considers biodiversity sufficiently to inform her in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

### **9. Modifications to the draft Order and Protective Provisions**

#### Protective Provisions

- 9.1. The drafting for a number of PPs within the Order were not agreed before the close of the Examination. The Secretary of State sought updates from the parties below on the status of the drafting. The updates received in response are detailed below.

##### *National Grid Transmission*

- 9.2. On 4 August 2023, National Grid Transmission confirmed the withdrawal of its objection. On 21 December 2023, the Applicant confirmed that agreement with National Gas Transmission had been reached and its objection withdrawn. The agreed PPs has been included in the Order at Part 6 of Schedule 14. The Applicant confirmed that this was previously confirmed in the Applicant’s Statutory Undertakers Position Statement (Revision D).

##### *National Grid Electricity Transmission PLC*

- 9.3. On 7 September 2023, National Grid Electricity Transmission Plc confirmed the withdrawal of its objection. On 21 December 2023, the Applicant confirmed that agreement with National Gas Electricity Transmission PLC had been reached and its objection withdrawn. The agreed form of PPs has been included in the Order at Part 7 of Schedule 14. The Applicant confirmed that this was previously confirmed in the Applicant’s Statutory Undertakers Position Statement (Revision D).

##### *Orsted – Hornsea 3 and Hornsea 4*

- 9.4. On 9 January 2024, Orsted confirmed that agreement with the Applicant had been reached and that the objections of Orsted 3 and Orsted 4 were withdrawn. Orsted confirmed that neither Orsted 3 nor Orsted 4 require PPs to be included for their benefit in the Order and those PPs have therefore been removed.

*Perenco*

- 9.5. On 20 December 2023, Perenco confirmed that it had reached an agreement on the drafting of the PPs with the Applicant and that its objection has been withdrawn. This was supported by the Applicant, who on 21 December 2023 confirmed that PPs had been agreed. The PPs are included in the Order at Part 15 of Schedule 14. It is noted that the ExA's recommended Order includes the agreed form of the PPs, and so there is no requirement for modification in this instance.

*National Highways*

- 9.6. Shortly before the close of the Examination, the Applicant proposed amendments to sub-paragraph 8 of Article 5 of the draft DCO in its representation REP8-054. The Secretary of State invited National Highways to confirm whether they had any comments on the Applicant's proposed drafting, as set out below:

*"(d) the transferee or lessee is National Highways for the purposes of undertaking any works to install ducts under the strategic road network as set out in Work Nos. 12A, 12B or 12C."*

- 9.7. On 20 December 2023, National Highways confirmed that it had reached an agreement on the form of PPs to be included within the DCO and as a result withdrew its objection. This was supported by the Applicant, who on 21 December 2023 confirmed that an agreed form of PPs had been agreed. The PPs are included in the Order at Part 14 of Schedule 14.
- 9.8. Following consideration of the recommended Order provided by the ExA, the Secretary of State has made the following modifications to the recommended Order:
- 9.8.1 Article 5(7)(b): An amendment to exclude the transfer of deemed marine licence from the provision which states that where the benefit of the DCO is transferred to a transferee or lessee, then the transferred benefit shall not be liable against the undertaker.
- 9.8.2 Article 6(3): Following correspondence from the National Highways, sub-paragraph added to disapply section 161(1) of the PA2008 to any works carried out in breach the A47 Tuddenham Order or in breach of the DCO because of the A47 Tuddenham Order. Consequential definitions added to Article 2.
- 9.8.3 Article 8(b): Deletion of sub-paragraph such that Secretary of State consent will be required for any transfer to a lessee or transferee, notwithstanding that they are a company whose shares are entirely owned by the undertaker or is a subsidiary to the undertaker.
- 9.8.4 Article 17(4): Amendment to make compulsory acquisition of land subject to articles on time limits and rights under or over streets.
- 9.8.5 Article 25(3): Amendment to clarify that undertaker must not remain in possession of the land for longer than is reasonably necessary when taking temporary possession of the land for carrying out the authorised project.

- 9.8.6 Article 28(4): Amended the definition of “public utility undertaker” for clarity.
  - 9.8.7 Schedule 1, paragraph 1, Work No.14A: Construction compound for the construction of other works. However, Work No. 14A is itself listed and has therefore been deleted.
  - 9.8.8 Schedule 2, requirement 9: Amendment added to reflect that compulsory acquisition powers should also not be exercised until notification given of the scenario to be implemented.
  - 9.8.9 Schedule 2, requirement 15(5): Requirement stipulating maximum number of vehicle trips set out in the construction traffic management plan must not be exceeded.
  - 9.8.10 Schedule 10, Part 2, paragraph 20(7): Amendment to reflect agreed changes with MMO regarding adaptive management plan in the event impacts are identified beyond those anticipated in the Environmental Statement.
  - 9.8.11 Schedule 11, Part 2, paragraph 20(7): Amendment to reflect agreed changes with MMO regarding adaptive management plan in the event impacts are identified beyond those anticipated in the Environmental Statement.
  - 9.8.12 Schedule 12, Part 2, paragraph 19(7): Amendment to reflect agreed changes with MMO regarding adaptive management plan in the event impacts are identified beyond those anticipated in the Environmental Statement.
  - 9.8.13 Schedule 13, Part 2, paragraph 19(7): Amendment to reflect agreed changes with MMO regarding adaptive management plan in the event impacts are identified beyond those anticipated in the Environmental Statement.
  - 9.8.14 Schedule 14, Part 3, PPs for the protection of Network Rail Infrastructure Limited updated to reflect agreement between the undertaker and Network Rail Infrastructure Limited.
- 9.9 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency.

## **10. Challenge to decision**

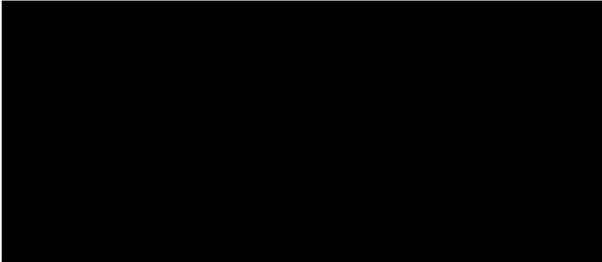
- 10.1. The circumstances in which the Secretary of State’s decision may be challenged are set out in the Annex to this letter.

## **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 PA2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 11.2. Section 134(6A) of the PA2008 provides that a CA notice shall be a local land charge. Section 134(6A) also requires the CA 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 OBE

Head of Energy Infrastructure Development

## **ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the PA2008, 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 or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/sheringham-and-dudgeon-extension-projects/>

**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).**

## ANNEX B: LIST OF ABBREVIATIONS

| Abbreviation | Reference                                               |
|--------------|---------------------------------------------------------|
| AA           | Appropriate Assessment                                  |
| AEoI         | Adverse Effect on Integrity                             |
| ALARP        | As Low As Reasonably Possible                           |
| AoNB         | Area of Natural Beauty                                  |
| ATCSMAC      | Air Traffic Control Surveillance Minimum Altitude Chart |
| BDC          | Broadland District Council                              |
| CA           | Compulsory Acquisition                                  |
| CIMP         | Compensation Implementation and Monitoring Plan         |
| CTMP         | Construction Traffic Management Plan                    |
| DCO          | Development Consent Order                               |
| DEP          | Dudgeon Offshore Wind Farm Extension Project            |
| DEP-N        | Dudgeon Extension Project North                         |
| dDML         | draft Deemed Marine License                             |
| dNPS         | draft National Policy Statement                         |
| EIA          | Environmental Impact Assessment                         |
| ES           | Environmental Statement                                 |
| ESC          | East Suffolk Council                                    |
| ExA          | The Examining Authority                                 |
| FFC SPA      | Flamborough and Filey Coast SPA                         |
| GCSG         | Guillemot Compensation Steering Group                   |
| GW SPA       | Greater Wash SPA                                        |
| HRA          | Habitats Regulations Assessment                         |
| IP           | Interested Party                                        |
| IROPI        | Imperative Reasons of Overriding Public Interest        |
| LEB          | Looming Eye Buoys                                       |
| LIR          | Local Impact Report                                     |
| LSE          | Likely Significant Effect                               |
| MCA          | Maritime and Coastguard Agency                          |
| MCZ          | Marine Conservation Zone                                |
| MEEB         | Measures of Equivalent Environmental Benefit            |
| MIMP         | MEEB Implementation and Monitoring Plan                 |
| MMMP         | Marine Mammals Mitigation Protocol                      |
| MMO          | Marine Management Organisation                          |
| MSA          | Minimum Safety Altitude                                 |
| NATS         | National Air Traffic Services                           |
| NCC          | Norfolk County Council                                  |
| NE           | Natural England                                         |
| NNC SPA      | North Norfolk Coast SPA                                 |
| NNDC         | North Norfolk District Council                          |
| NPS          | National Policy Statement                               |
| NRA          | Navigational Risk Assessment                            |

|               |                                               |
|---------------|-----------------------------------------------|
| NSN           | National Site Network                         |
| NT            | National Trust                                |
| OCTMP         | Outline Construction Traffic Management Plan  |
| Offshore IPMP | Offshore In-Principle Monitoring Plan         |
| ODC           | Outer Dowsing Channel                         |
| OPC           | Oulton Parish Council                         |
| OWF           | Offshore Wind Farm                            |
| PA2008        | The Planning Act 2008                         |
| PFG           | Pink-Footed Goose                             |
| PP            | Protective Provision                          |
| PSED          | Public Sector Equality Duty                   |
| PSR           | Primary Surveillance Radar                    |
| RIES          | Report on the Implications for European Sites |
| R             | Requirement                                   |
| RR            | Relevant Representation                       |
| RSPB          | Royal Society for the Protection of Birds     |
| SAC           | Special Area of Conservation                  |
| SIP           | Site Integrity Plan                           |
| SNC           | South Norfolk Council                         |
| SNCB          | Statutory Nature Conservation Body            |
| SNS SAC       | Southern North Sea SAC                        |
| SoCG          | Statement of Common Ground                    |
| SPA           | Special Protection Area                       |
| SU            | Statutory Undertaker                          |
| TP            | Temporary Possession                          |