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Ref: EN010109

Mark Jones  
Equinor New Energy Ltd  
1 Kingdom Street  
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6 February 2024

Dear Mr Jones,

**PLANNING ACT 2008**

**PROPOSED NON-MATERIAL CHANGE TO: THE SHERINGHAM SHOAL AND DUDGEON OFFSHORE WIND FARM EXTENSION PROJECT DEVELOPMENT CONSENT ORDER 2024 (“THE ORDER”)**

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 application which was made by Equinor New Energy Ltd (“the Applicant”) on 23 July 2024 (“the Application”) for changes to the Order under section 153 of, and Schedule 6 to, the Planning Act 2008 (“PA2008”). The Applicant submitted proposed corrections to the Order by email on 2 July 2024. This letter is the notification of the Secretary of State’s decision in accordance with Regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”).
2. The Order of 17 April 2024 gave development consent for the construction and operation of the Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects.
3. The Applicant is seeking consent to facilitate a potential increase in the maximum generating capacity to the Sheringham Shoal Offshore Wind Farm Extension Project (“SEP”) and the Dudgeon Offshore Wind Farm Extension Project (“DEP”). The Applicant seeks these changes to realise the increased permitted grid connection capacity from 719 MW to 950 MW that it has secured through a Stage 2 Transmission Entry Capacity from the National Grid Electricity System Operator. The Secretary of State notes that in order to realise any increase in capacity the Applicant will require lease extensions from the Crown Estate and variations to the Marine Licences. The changes sought to the Order of 17 April 2024 will allow that capacity to be realised provided that the lease extension and variations to the marine licences are made.
4. The following changes are proposed by the Applicant:
  - (a) Increases to the total rotor-swept areas (“RSA”) from 1.00 km<sup>2</sup> to up to 1.42km<sup>2</sup> for SEP, and from 1.30 km<sup>2</sup> to up to 1.85 km<sup>2</sup> for DEP);

- (b) Corresponding increases to the minimum air gap (being the distance between the lowest point of the rotating blade of a wind turbine generator and highest astronomical tide), as additional mitigation to ensure no material increase in collision risk to ornithology receptors;
  - (c) An increase to the maximum number of interlink cables from three to four in the event two Offshore Substation Platforms (“OSPs”) are constructed (Scenarios 1(c), 1(d), 2 or 3 as defined in the Order) or in the case that only DEP is constructed (scenario 1(b) as defined in the Order) and from seven to eight in the event one OSP is constructed for SEP and DEP (in the SEP wind farm site, Scenario 4 as defined in the Order) together with related increases to interlink cable protection area and volume and to the maximum number of interlink cable crossings for Scenarios 1(b), 1(c), 1(d), 2, 3, and 4; and
  - (d) An increase to the maximum area and volume of infield cable protection and a reduction in infield cable crossings associated with Work No. 2B for all scenarios.
5. Amendments to the Order which the Applicant requests to correct discrepancies between the list of documents to be certified in Schedule 18 of the Order and the documents to be provided to the Secretary of State as part of this certification. These were originally requested as part of the Applicant’s request for a correction order but could not be made as the application was received out of time. The Applicant has therefore included them in this Application.:
- (a) Schedule 2, Part 1, Requirement 17(3). Removal of reference to “(onshore substation)” in the name of the outline operational drainage strategy.
  - (b) Schedule 18, Table 1, Document number 6.2.3. The Examination library reference in column 2 is amended with the replacement of “APP-106” for “APP-116”.
  - (c) Schedule 18, Table 1, Document number 6.3.10.2. The Examination library reference in column 2 is amended with the replacement of “REP7-026” for “REP8-019”.
  - (d) Schedule 18, Table 1, Document number 6.3.25.1. The Examination library reference in column 2 is amended with the replacement of “APP-275” for “APP-274”.
  - (e) Schedule 18, Table 1, Document number 6.3.26.1. The Examination library reference in column 2 is amended with the replacement of “APP-276” for “APP-275”.
  - (f) Schedule 18, Table 1, Document number 6.3.27.1. The Examination library reference in column 2 is amended with the replacement of “APP-277” for “APP-276”.
  - (g) Schedule 18, Table 1, Document number 6.3.27.2. The Examination library reference in column 2 is amended with the replacement of “APP-278” for “APP-277”.
  - (h) Schedule 18, Table 1, Document number 6.3.27.3. The Examination library reference in column 2 is amended with the replacement of “APP-279” for “APP-278”.
  - (i) Schedule 18, Table 1, Document number 6.2.28.1. The Examination library reference in column 2 is amended with the replacement of “APP-280” for “APP-279”.
  - (j) Schedule 18, Table 1, Document number 9.20. The document name in column 3 is amended with the removal of reference to “(onshore substation)”.
  - (k) Schedule 18, Table 1, Document number 9.24. The document reference in column 1 is amended with the replacement of “9.24” for “6.5”.

## Summary of the Secretary of State's Decision

6. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to PA2008 to make non-material changes (“NMCs”) to the Order to authorise the changes as detailed in the Application. This letter is notification of the Secretary of State's decision in accordance with Regulation 8 of the 2011 Regulations.
7. The Secretary of State has given consideration to whether the Application is for a material or non-material change. In doing so, the Secretary of State has had regard to paragraph 2(2) of Schedule 6 to the PA2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.
8. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the PA2008 and Part 1 of the 2011 Regulations.
9. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government), the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”)<sup>1</sup>, which makes the following points:
  - (a) given the range of infrastructure projects that are consented through the PA2008, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material;
  - (b) however, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Four examples are given in the Guidance as a starting point for assessing the materiality of a proposed change, namely:
    - i. whether an update would be required to the Environmental Statement (“ES”) (from that at the time the Order was made) to take account of new, or materially different, likely significant effects on the environment;
    - ii. whether there would be a need for a Habitats Regulations Assessment (“HRA”), or a need for a new or additional licence in respect of European Protected Species (“EPS”);
    - iii. whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and
    - iv. whether the proposed change would have a potential impact on local people and business (for example, in relation to visual amenity from changes to the size and height of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).
    - v. although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.

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<sup>1</sup> <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

10. The Secretary of State has considered the change proposed by the Applicant against the four matters set out in (1), (2), (3) and (4) above:
- (a) The Secretary of State notes that the information supplied supports the Applicant's conclusions that there are no new, or materially different, likely significant effects from those assessed in the ES. Considering the assessments supplied by the Applicant and responses to the consultation, the Secretary of State has concluded that no update is required to the ES as a result of the proposed amendments to the Order.
  - (b) In respect of the HRA, the Secretary of State has considered the nature and impact of the change proposed and is satisfied that there is no change to the conclusions of the HRA as a result of the proposed amendments and therefore a new HRA is not required. He is also satisfied that the proposed change does not bring about the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective than those assessed for the original application.
  - (c) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
  - (d) In respect of impacts on local people and businesses, the Secretary of State notes that no changes are anticipated by the Applicant to the impacts already assessed in the ES.
11. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggests that the change considered in this letter is not a material change.
12. Taking the information contained in the application and responses received from consultees into account, the Secretary of State is therefore satisfied that the changes considered in this letter are not material and should be dealt with under the procedures for NMCs.

### **Consultation and Responses**

13. In accordance with the requirements of Regulation 7 of the 2011 Regulations specified parties, such as the local planning authority, were notified by email on 25 July 2024.
14. The Applicant published a notice of the Application in accordance with Regulation 6 (publicising the application) of the 2011 Regulations (the "Regulation 6 notice") for two consecutive weeks in the local press (Eastern Daily Press and North Norfolk News) on 25 July 2024 and 1 August 2024 and made publicly available on the Planning Inspectorate's ("PINS") website, such that there was an opportunity for anyone not notified to also submit representations to PINS. The Secretary of State did not deem it necessary to publish the notice in any additional publications to satisfy the requirements of Regulation 6(1). The deadline for receipt of representations on the Application was 23:59 on 2 September 2024.
15. The Applicant submitted its Consultation and Publicity Report as required by Regulation 7A of the 2011 Regulations on 6 August 2024, which states that the Applicant has complied with all necessary steps set out in Regulations 6 and 7 of the 2011 Regulations in respect of

stakeholder consultation and its public engagement approach. This was published on the PINS website on 13 August 2024.

16. Five consultation responses were received from Historic England, the Maritime and Coastguard Agency, the Ministry of Defence, the Marine Management Organisation (“MMO”), and Natural England (“NE”). No objections were made.
17. NE agreed with the Applicant’s conclusions in the Supplementary Environmental Report Appendix A, namely that for the ornithology species examined for the three RSA Bands, based on Option 2 of the Band (2012) Collision Risk Model (CRM):
  - *“For NMC RSA Band 1, it is noted that for Sandwich tern, kittiwake, lesser black-backed gull and common tern, a non-material increase (0.01 birds per annum) is predicted for the combined effects of SEP and DEP, when compared to the DCO parameters;*
  - *For all other scenarios, collision estimates are unchanged or reduced when compared to DCO collision estimates.*
  - *For all scenarios proposed for the NMC submission, there would be no measurable increase in collision mortality, and no change to the assessment conclusions presented in the relevant DCO submission documents.”*
18. NE advised that for collision mortality the worst-case scenario assessed in the ES would remain unchanged. NE confirmed that no different effects would arise for the Flamborough & Filey Coast Special Protection Area (“SPA”), Greater Wash SPA and the North Norfolk Coast SPA than already assessed within the Report to Inform the Appropriate Assessment and the Secretary of State’s Appropriate Assessment. NE also advised that the CRM outputs should be provided for the 95% upper confidence interval density estimates in addition to mean density estimates. However, NE confirmed that for this Application, undertaking the CRM based on only the mean density estimates is sufficient to demonstrate there would be no measurable increase in collision mortality, and that the 95% upper confidence interval value, which is used to generate compensatory requirements, will not materially increase.
19. The MMO confirmed that it had no objections to the Application and its content, providing existing mitigation measures remain in place. The MMO confirms that it will work with the Planning Inspectorate and Secretary of State to ensure any change to the Deemed Marine Licence is appropriate.
20. No comments were received from the following parties: Joint Nature Conservation Committee; the Crown Estate; Civil Aviation Authority; NATS (En Route) PLC; Health and Safety Executive; TC Dudgeon OFTO plc; Kelling Parish Council; Sheringham Town Council; Upper Sheringham Parish Council; Weybourne Parish Council; Norfolk County Council; North Norfolk District Council; Centre for Environment, Fisheries and Aquaculture Science; RSPB; Norfolk Coast Partnership; Nick Bright – Fisherman; Greater Wash Fishing Industry Group; Norfolk Independent Fishermen’s Association; Wells and District Inshore Fishermen’s Association; Independent Fishermen; Eastern Inshore Fisheries and Conservation Authorities; National Federation of Fishermen’s Organisations; Norfolk Independent Fishermen’s Association; North Norfolk Fishermen’s Society; REAF CIC; Eastern England Fish Producers Organisation Ltd; Wash and North Norfolk Marine Partnership; Norfolk Wildlife Trust; National Trust; Shell; Total Energies; Steffan Aquarone MP; Perenco; and British Trust for Ornithology.

21. On 7 November 2024, the Secretary of State requested clarifications from the Applicant. The Applicant was asked to explain why an assessment of displacement or barrier effects was not carried out for ornithology. With regards to cable parameters, the Secretary of State noted that there are increases to some cable parameters, notably, regarding Operation & Maintenance (“O&M”) impacts 5 and 7 (page 39 of the Supplementary Environmental Report), it is stated that *“the 8.8% increase in worst-case external interlink cable protection parameter and the increase in cable repair and reburial requirements (Table 2.3) is not at a scale that would result in a change to the ‘negligible adverse’ assessment conclusions.”*. Similar high-level statements were made regarding other effects, such as displaced sediment volumes. The Secretary of State requested further explanation and justification to support these statements in Table 3.2, preferably with reference to the methodology used to determine the significance of the effect in the original Environmental Statement and considering the effects of the updated cable parameters using that methodology.
22. The Applicant responded on 15 November 2024 and confirmed that the worst-case scenario for operational phase displacement and barrier effects assessments is based upon the boundaries of the SEP and DEP windfarm sites, which are not being changed by the NMC application. Therefore, the overall number or size of wind turbines has no effect on operational phase displacement and barrier effect assessments and these are subsequently not required to be updated.
23. With regards to the questions related to cable parameters, the Applicant responded and provided further assessment for each effect pathway and receptor identified. For example, regarding morphological and sediment Transport Effects due to Cable Protection Measures within the SEP and DEP Wind Farm Sites and Interlink Cable Corridors, the Applicant stated that the sensitivity, value and magnitude criteria described within Section 6.3.4.1 of Environmental Statement (ES) Chapter 6 MGOPP [APP-092] were considered and applied when re-evaluating the magnitude of impact as a result of the proposed increase in external cable protection. They concluded that the magnitude of impact on sandbanks (i.e. the only receptor relevant to this impact since there would be no impact on the East Anglian coast or Cromer Shoal Chalk Beds MCZ receptors since these are located remotely from the zone of potential effect) would remain as described in Table 6-36 of [APP-092]. This is because protrusions from the seabed are unlikely to significantly affect the migration of sand waves, since sand wave heights (up to 4m) in most areas would exceed the height of cable protection works and would pass over them. There could be localised interruptions to bedload transport in other areas, but the gross patterns of bedload transport across the offshore development area would not be affected significantly.
24. The presence of cable and crossing protection works on the seabed would therefore represent the worst-case in terms of a direct loss of seabed area, but this footprint would likely be lower than that of the foundations (and associated scour protection works) within SEP or DEP. If cable protection did present an obstruction to bedload transport, then it would be likely that sand waves would pass over them. Gross patterns of bedload transport would therefore not be affected significantly, and the conclusion of a negligible adverse effect on sand banks (and associated sand waves) as reached in [APP-092] would not change as a result of the proposed NMC.

25. The Secretary of State has considered the representations received in response to the consultation and the additional information received in response to his information request of 7 November 2024 and considers that the information provided is sufficient to enable him to consider whether the changes would result in any new or materially different likely significant effects.

### **Environmental Impact Assessment**

26. The Secretary of State has considered whether the Application would give rise to any new significant or materially different likely significant effects when compared to the effects set out in the ES for the development authorised by the Order.

27. The Secretary of State has considered all relevant information provided and the comments of consultees. The Secretary of State agrees with the Applicant's conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the ES for the development authorised by the Order and as such considers that there is no requirement to update the ES.

28. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State considers there is no need for consultation on likely significant transboundary effects in accordance with Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

### **The Habitats Regulations**

29. The Secretary of State has considered the relevant requirements as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site within the national site network, known as "protected sites". If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to Regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application (subject to Regulation 64) if she has ascertained that it will not adversely affect the integrity of a protected site.

30. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposed changes do not alter the conclusions set out in the Applicant's ES and the Secretary of State's HRA for the Order, and therefore a new HRA is not required.

### **General Considerations**

#### Transboundary Impacts

31. Under Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended), the Secretary of State has considered whether the proposed development is likely to have a significant effect on the environment in a European Economic Area ("EEA") State. The Secretary of State has considered whether the change sought through

this Application will have any potential impacts on an EEA State and has concluded that there is no change in the environmental impacts considered within the existing environmental statement for the project. Consequently, the Secretary of State has concluded that there would not be likely significant effects on the environment of any EEA state whether the Application is considered of itself or cumulatively with the environmental effects already considered for the 2024 Order.

32. The Secretary of State has also considered whether there may be potential impacts on protected sites in EU Member States, known as transboundary sites, from this Application. Noting that the Secretary of State has reached a conclusion that there will be no likely significant effects on protected sites, the Secretary of State has also concluded that there are no realistic impact pathways whereby transboundary sites may be impacted by this Application.
33. The Secretary of State therefore concludes there is no need for transboundary consultation with EEA States.

#### Equality Act 2010

34. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sex, sexual orientation, gender reassignment; disability; marriage and civil partnerships;<sup>2</sup> pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
35. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010 and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

#### Human Rights Act 1998

36. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

#### Natural Environment and Rural Communities Act 2006

37. 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 whilst having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that

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



biodiversity has been considered sufficiently in this application for an amendment to accord with this duty.

### **Secretary of State's Conclusions and Decision**

38. The Secretary of State has considered the ongoing need for the Development and considers that the Project, amended with the proposed change, continues to conform with the policy objectives outlined in 2011 EN-1 (Overarching National Policy Statement for Energy) and 2011 EN-3 (National Policy Statement for Renewable Energy Infrastructure), along with the newly designated 2024 versions of these National Policy Statements. The need for the Project remains as set out in the Secretary of State's letter of 17 April 2024.
39. As such, for the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicant's request is justified and demonstrates that the proposed changes will not result in changes to the impact conclusions of the ES that accompanied the original Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects application.
40. The Secretary of State has considered the nature of the proposed changes, noting that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the Order.
41. The Secretary of State has also considered the amendments requested by the Applicant on 2 July 2024. The Secretary of State is content that these are typographical errors and is therefore content to approve these amendments.
42. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to the Order. The Secretary of State is satisfied that the changes requested by the Applicant are not material changes to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order to authorise the changes detailed in the Application.

### **Challenge to Decision**

43. The Secretary of State's decision on this Application is being notified as required by Regulation 8 of the 2011 Regulations.

Yours sincerely,



John Wheadon

Head of Energy Infrastructure Planning Delivery

Department of Energy Security & Net Zero

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

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Amendment Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

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

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)