

# Meeting note

<b>Project name</b>	Sheringham and Dudgeon Extension Projects
<b>File reference</b>	EN010109
<b>Status</b>	<b>Final</b>
<b>Author</b>	The Planning Inspectorate
<b>Date</b>	19 July 2022
<b>Meeting with</b>	Equinor
<b>Venue</b>	Microsoft Teams
<b>Meeting objectives</b>	Project Update Meeting
<b>Circulation</b>	All attendees

## **Summary of key points discussed, and advice given**

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

## **Update on Applicant's derogation position**

The Applicant updated that it is still on target for submitting the DCO application in late August 2022. The Applicant provided an update on key conclusions of its Appropriate Assessment and Marine Conservation Zone Assessment (MCZA) for application. These included:

- North Norfolk Coast Special Protection Area (SPA) / Greater Wash SPA Sandwich tern – Adverse Effect on Integrity (AEoI) cannot be ruled out in combination with other plans and projects. Therefore, compensation is required should the Secretary of State (SoS) agree with this conclusion, and a compensation proposal will be provided as part of the application.
- Flamborough and Filey Coast SPA Kittiwake - AEoI cannot be ruled out in combination with other plans and projects. Therefore, compensation is required should the SoS agree with this conclusion, and a compensation proposal will be provided as part of the application.
- Flamborough and Filey Coast SPA Gannet, guillemot and razorbill – No AEoI either alone or in-combination with other plans and projects. However, taking onboard pre-application advice from statutory stakeholders, compensation proposals will be provided in the application on a without prejudice basis.
- Cromer Shoals Chalk Beds Marine Conservation Zone (CSCB MCZ) – the conservation objective of maintaining the protected features of the CSCB MCZ in a favourable condition or restoring them to favourable condition will not be hindered by the construction, operation and decommissioning phases of SEP and DEP alone or cumulatively with any other plan, project or activity. However, taking onboard pre-application advice from statutory stakeholders, an

in-principle measures of equivalent environmental benefit (MEEB) plan will be provided with the application on a without prejudice basis.

The Applicant explained that before this project, only the Hornsea Four Offshore Wind Farm application was submitted following the direction of the Hornsea Three SoS decision regarding progressing derogation cases and compensation proposals during the pre-application period. This is to enable full consideration of the need for derogation under the Habitats Regulations during examination.

- **Overview of the key challenges and progress against latest and draft guidance**

- **Pre-application challenges**

The Applicant outlined that it has been engaging with the Inspectorate and key consultees on derogation since 2020, with discussions informing the project's direction with respect to derogation. The Applicant began preparing draft without prejudice compensation plans for Sandwich tern and kittiwake in early 2021. These documents facilitated discussions with Natural England (NE) and other stakeholders regarding potential compensatory measures. Around the same time, the Applicant also prepared a without prejudice derogation case for the CSCB MCZ and started early discussions with stakeholders regarding MEEB. The Applicant shared draft outline compensation/MEEB proposals with key stakeholders in advance of publishing the Preliminary Environmental Information Report (PEIR) in April 2021. The PEIR contained a draft Environmental Impact Assessment (EIA), Habitats Regulations Assessment (HRA) and Marine Conservation Zone Assessment (MCZA).

Following the Section 42 consultation, the Applicant did not receive clear advice from Statutory Nature Conservation Bodies (SNCBs) on the conclusions of the ornithology assessment and draft HRA. The Applicant also outlined that it had not yet received definitive guidance from the Department of Environment, Food and Rural Affairs (Defra) and SNCBs on certain aspects of derogation and experienced differing views between stakeholders on suitable compensatory measures for the species in question. The Applicant highlighted that there is currently no mechanism available to deliver strategic compensation. However, it noted the emergence of the Marine Recovery Fund in response to the British Energy Security Strategy and confirmed it was monitoring ongoing discussions between Defra and the Department for Business, Energy and Industrial Strategy (BEIS) regarding this.

- **Applicant's response to pre-application challenges**

- The Applicant took the decision last year to delay the application from November 2021 to Q2 2022 to undertake further work to support its Appropriate Assessment and derogation cases.
- To seek alignment with the stakeholders and, in particular, NE on the outcomes of the assessment work, the Applicant undertook further camera analysis to inform updated density estimations, updated design-based density estimation for all species and model-based density estimation for Sandwich tern.

- The Applicant undertook an additional Population Viability Analysis (PVA) modelling workshop and engagement.
- The Applicant has actively participated in the inception and maturity of the Offshore Wind Industry Council Derogation subgroup.
- The Applicant has continued closely monitoring other applications and liaising with other developers as appropriate.
- In June 2022, the Applicant sought NE's advice on its draft ornithological assessments (Environmental Impact Assessment & Report to Inform Appropriate Assessment (RIAA)) ahead of application submission.
- The Applicant has undertaken targeted engagement with the relevant stakeholders on specific aspects of the compensation proposals.
- The Applicant has continued to undertake regular engagement with NE and Defra and invited the Inspectorate to participate in Expert Topic Group (ETG) meetings for ornithological compensation since January 2022.

- **Emerging external landscape on derogation work**

The Applicant highlighted that it is monitoring the emerging external context with respect to derogation work and decisions taken by other developers and the SoS in relation to Norfolk Boreas, Norfolk Vanguard, East Anglia 1 North/ East Anglia 2 (March 2022) and the SoS's decision regarding Hornsea 4 which is expected in February 2023.

The Applicant explained that the reason for projects requiring derogation under the Habitats Regulations has been in relation to in-combination effects. With regard to the Norfolk Boreas Offshore Wind Farm DCO, NE expressed concerns about the concept of de minimis effects in relation to in-combination effects, particularly where impacts are considered to have already reached the level where the integrity of the site is affected. The SoS applied strict interpretation in the Boreas DCO decision of the Habitats Regulations, leading to a conclusion of AEoI for the Flamborough and Filey Coast SPA kittiwake feature, which appears to set a precedent that de minimis cannot be relied upon.

The Applicant outlined that given recent decisions on other projects and in light of NE's view of the predicted impacts for Hornsea 4, they were urged to consider other species, including guillemot, razorbill and gannet.

In light of decisions on other projects, emerging assessment information for the projects and pre-application advice from statutory stakeholders, the Applicant re-evaluated its derogation position from the PEIR (to that outlined above).

Regarding the emerging external landscape, the Applicant highlighted that it has continued to actively engage with NE, Defra, the Offshore Wind Industry Council Derogation Subgroup and other stakeholders to ensure they have remained at the forefront of any developments. In addition, the decision was taken to further delay application submission from Q2 2022 to late August 2022 to allow, in part, time to capture the latest developments concerning derogation (namely regarding strategic compensation delivery).

- **Appropriate Assessment**

The Applicant highlighted that it had updated design-based density estimation and model-based density estimation (MRSea) for Sandwich tern. It had also received new Sandwich tern flight height data from NE and has made key changes to the project design envelope since the PEIR, including raising the air gap from a minimum of 26m to 30m above Highest Astronomical Tide to reduce impacts of ornithological receptors.

- **Key points of uncertainty for the application**
  - At the time, an agreement had not been reached with NE on the EIA and RIAA conclusions for offshore ornithology. However, the Applicant highlighted that NE was reviewing the updated assessment with comments expected in September 2022.
  - The Applicant reiterated the lack of SNCB guidance on the draft assessment outcomes and 'de minimis' thresholds and how this might be applied to the Extension projects.
  - The Applicant also reiterated that the lack of guidance on additionality and non like for like measures continued to present a challenge for the projects.

The Applicant emphasised that they have sought to obtain clear guidance from Defra on some of the principal areas of uncertainty for derogation. During the Applicant's latest communication with Defra in July 2022, it was confirmed that the final best practice guidance for delivering compensatory measures in relation to Marine Protected Areas will not be published until the end of 2022.

The Inspectorate expressed concerns about the delay in the issuing of the updated guidance and any implications of this in reaching agreement on specific issues with NE, which can affect the Examination. The Applicant responded by clarifying that despite the certain points of uncertainty outlined above, recent engagement with NE has been positive. Specifically, NE had informed the Applicant that it considered the Applicant's assessments and derogation cases were sufficiently mature to enable constructive examination and were therefore supportive of application submission in late August 2022 (and advised against delaying submission of the application further). The Inspectorate requested the Applicant to provide written evidence updating its position with NE at the time of submission with a timeline of when the information will be provided.

The Inspectorate also queried if the Applicant has been able to engage with other stakeholders, to which the Applicant confirmed that they are liaising with other stakeholders, including RSPB and that this engagement had been positive and constructive.

### **Update on Applicant's compensatory measures proposals for key species**

The Applicant explained that it had considered compensatory measures in the context of three delivery models: project-led, collaborative and strategic.

The Applicant highlighted it had given regard to draft Defra guidance (Defra, 2021) , including the requirement to provide as much detail as possible at the point of application and to have undertaken detailed consultations and targeted consultation to seek in-principle decisions to agreements where appropriate.

The Applicant outlined the package of compensatory measures it is proposing for the following species and the associated delivery model (in brackets):

- Sandwich tern
  - Prey enhancement (strategic, subject to government action)
  - Improve nesting habitat and restoration of lost breeding range at non-SPA sites (project-led)
  - Improve nesting habitat and breeding success at other SPA sites (project-led, subject to further agreement)
- Kittiwake
  - Prey enhancement (strategic, subject to government action)
  - Improve existing artificial nesting sites to increase breeding success (project-led)

The Applicant explained that it continues to investigate opportunities for collaboration with other developers on new artificial structures onshore and offshore to increase breeding numbers and success.

- Gannet
  - Bycatch prevention research proposal (project-led)
  - Non like-for-like compensation (project-led)
- Guillemot and Razorbill
  - Prey enhancement (strategic, subject to government action)
  - Bycatch reduction (project-led)

The Applicant explained that it continues to investigate opportunities for collaboration with other developers on predator eradication from a breeding colony.

- Cromer Shoal Chalk Beds MCZ-MEEB proposal
  - Native oyster bed restoration within the CSCB MCZ (preferred measure)
  - Planting of native oyster beds within SEP and DEP array area or another location, removal of anthropogenic features or designation of a comparable feature (alternative options)

The Applicant highlighted the key documents including HRA, MCZA, draft DCO, outline plans and other documents that will form a part of the application and support the HRA and Marine and Coastal Access Act derogation cases.