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To the Applicant.  
By email only.

Case Ref: EN010119  
Date: 28 November 2024

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Dear Mr Harper

## **Application by North Falls Offshore Wind Farm Ltd for an Order Granting Development Consent for the North Falls Offshore Wind Farm (EN010119)**

### **Planning Act 2008 – Section 89(3)**

#### **Procedural Decisions following the Application's acceptance for Examination and the submission of Relevant Representations by Interested Parties**

Following the Application's acceptance for Examination on 22 August 2024 [PD-001] the Examining Authority (ExA) has decided to make a number of Procedural Decisions including those requesting additional information and / or seeking clarification. The following Procedural Decisions have been made under Section 89(3) of the Planning Act 2008 (PA2008) with the purpose of utilising Pre-Examination time and to obtain additional information or clarifications as early as possible. This is to assist the Examination which will be commencing in due course. This set of Procedural Decisions, amongst other things, relate to:

- Documents submitted following the Application's submission and acceptance
- The preparation and submission of Statements of Common Ground (SoCGs)
- Natural England's Relevant Representation (RR) [RR-243]
- The preparation and submission of Local Impact Reports (LIR) by Local Planning Authorities
- The submission of Land Rights Trackers by the Applicant
- Revisions to Application documents and other documents
- Request for a National Policy Statement (NPS) Accordance Table
- Request for an update on Option 3 – Offshore Electrical Connection

It should be noted that in making the Procedural Decisions relating to the submission of various documents by the Applicant, the SoCGs, the Natural England Principal Areas of Disagreement Summary Statement and the LIRs, the ExA has provided indications for the parties involved in their preparation of when those documents will be required to be submitted as Examination documents.

## 1) Documents submitted following the Application's submission and acceptance

### Applicant's documents

Further to the issuing of section 51 advice as part of the Application's acceptance, the Applicant submitted the following documents on 14 October 2024:

#### **Applicant's Response to the S51 Advice**

- [AS-002](#) - 1.3.1 Guide to the Application (Clean)
- [AS-003](#) - 1.3.1 Guide to the Application (Tracked)
- [AS-004](#) - 2.2.1 Planning Statement (Clean)
- [AS-005](#) - 2.2.1 Planning Statement (Tracked)
- [AS-006](#) - 2.5.1 Co-ordination Report (Clean)
- [AS-007](#) - 2.5.1 Co-ordination Report (Tracked)
- [AS-008](#) - 3.1.1.1 ES Non-technical Summary (Clean)
- [AS-009](#) - 3.1.1.1 ES Non-technical Summary (Tracked)
- [AS-010](#) - 3.1.33.1 ES Chapter 31 Socio-economics (Clean)
- [AS-011](#) - 3.1.33.1 ES Chapter 31 Socio-economics (Tracked)
- [AS-012](#) - 3.1.36.1 ES Chapter 34 Major Accidents and Disasters (Clean)
- [AS-013](#) - 3.1.36.1 ES Chapter 34 Major Accidents and Disasters (Tracked)
- [AS-014](#) - 4.1.3.3.1 Consultation Report Appendix F.15 to F.30 (Part 3) (Clean)
- [AS-015](#) - 4.2 Consultation Report (Clean)
- [AS-016](#) - 4.2 Consultation Report (Tracked)
- [AS-017](#) - 5.17.1 Habitats of Protected Species Plans
- [AS-018](#) - 5.3.1 Land Plans
- [AS-019](#) - 5.6.1 Works Plans (Onshore)
- [AS-020](#) - 5.7.1 Works Plans (Offshore)
- [AS-021](#) - 5.9.1 Access to Works Plan
- [AS-022](#) - 6.1.1 Draft Development Consent Order (Clean)
- [AS-023](#) - 6.1.1 Draft Development Consent Order (Tracked)
- [AS-024](#) - 6.2.1 Explanatory Memorandum (Clean)
- [AS-025](#) - 6.2.1 Explanatory Memorandum (Tracked)
- [AS-026](#) - 6.3.1 Book of Reference (Clean)
- [AS-027](#) - 6.3.1 Book of Reference (Tracked)
- [AS-028](#) - 6.5.1 Statement of Reasons (Clean)
- [AS-029](#) - 6.5.1 Statement of Reasons (Tracked)
- [AS-030](#) - 7.28.1 Consents and Licences Statement (Clean)
- [AS-031](#) - 7.28.1 Consents and Licences Statement (Tracked)
- [AS-032](#) - 7.30 Schedule of Changes to the draft DCO
- [AS-033](#) - 8.1 Applicant's Response to S51 Advice

The above listed documents include addressing drafting errors raised in the aforementioned section 51 advice. Given those documents are in response to section 51 advice which includes addressing errors in the originally submitted versions the ExA has made the procedural decision to accept additional submissions [AS-002] to [AS-033] (inclusive).

## 2) The preparation and submission of SoCGs

The ExA notes the Applicant has advised in the Consultation Report [APP-215] that it is preparing SoCGs with key stakeholders with the aim of submitting final and signed versions no later than the mid-point of the Examination. Having regard to that intention and the RRs that have been submitted by the Interested Parties (IPs), the ExA has made a Procedural Decision that the Applicant, the IPs and Other Persons listed below **must**

prepare initial SoCGs at or before a deadline date that will be identified in the Examination timetable and to be thereafter updated during the Examination and to be submitted in their **final and signed** forms at the **Final Deadline** to be specified in that timetable. The various submission dates will be determined following the holding of the Preliminary Meeting and the ExA's confirmation of the Examination timetable. However, the ExA would highlight that we wish to receive the initial SoCGs at an early stage prior to the mid-point of the Examination, so that there is clarity about what is or is not agreed between the Applicant, and IPs. This will also help to inform us about the need to hold any Issue Specific Hearings (ISHs) during the Examination, and to enable the requisite notice for hearings to be provided. Unless otherwise stated or agreed, the SoCG should be agreed between the Applicant and the relevant IP or parties and submitted **by the Applicant**.

The aim of a SoCG is to agree factual information and to inform the ExA and all other parties by identifying where there is agreement and where the differences lie at an early stage in the Examination process. In addition to identifying matters which are not in dispute or need not be the subject of further evidence, it can also usefully state where and why there may be disagreement about the interpretation and relevance of the information. The ExA therefore requests that SoCGs clearly identify and summarise within them principal areas of disagreement, as well as matters which have been agreed.

**All of the SoCGs listed below should cover the Articles and Requirements in the draft Development Consent Order.** Any Interested Party seeking that an Article or Requirement is reworded should provide the form of words which are being sought.

The ExA also requests that a "Progress with Statements of Common Ground" document is submitted by the Applicant at the deadlines to be set out in the Examination Timetable to provide a summary of progress with the various parties on all topics included in the SoCGs and a list of outstanding matters of disagreement.

The ExA will not therefore generally be requesting IPs to identify and submit separate Principal Areas of Disagreement Summary Statements (PADSS) in addition to the SoCGs.

However, the ExA notes that Natural England in submitting its RR [RR-243] has taken the opportunity to incorporate its Written Representations (WRs) with its RR and identify PADSS. Accordingly, the ExA will not be requiring the Applicant and Natural England to enter into a bilateral SoCG and the ExA has made a separate Procedural Decision below relating to the PADSS that Natural England has identified.

For some matters which multiple IPs have an interest in, for example effects on: shipping and navigation; marine ecology (or elements thereof); and the operation of the public highway, there may be scope for those matters to be addressed thematically, with the Applicant and two or more IPs entering into topic specific SoCGs. The ExA would be supportive of such an approach being taken, particularly if that would assist the expeditious preparation of the SoCGs. Although Natural England and the Applicant are not being required to enter into a bilateral SoCG, should Natural England wish to enter into a multi-party thematic SoCG, then the ExA would have no objection to that.

The Applicant and the following must enter into bilateral or multi-party SoCGs:

- Affinity Water Limited
- Aldeburgh Town Council
- Ardleigh Parish Council
- Anglian Water Services

- Babergh District Council
- Cadent Gas Limited
- Civil Aviation Authority
- Corporation of Trinity House of Deptford Strond
- Dedham Vale Society
- East Suffolk Council
- Environment Agency
- Essex County Council
- Essex County Fire and Rescue Service
- Essex Police
- Essex Suffolk Norfolk pylons
- Essex Wildlife Trust
- Forestry Commission
- Frating Parish Council
- Harwich Harbour Fishermen's Association
- Harwich Haven Authority
- Hertfordshire County Council
- Historic England
- Kent & Essex Inshore Fisheries Conservation Authority
- Leiston-cum-Sizewell Town Council
- Little Bromley Parish Council
- London Gateway Port Limited
- Marine Management Organisation
- Maritime and Coastguard Agency
- Ministry of Defence
- National Air Traffic Services
- National Federation of Fishermen's Organisations
- National Grid Electricity Transmission PLC
- National Highways
- National Trust
- Network Rail Infrastructure Limited
- Port of Felixstowe
- Port of London Authority
- Port of Tilbury London Limited
- Royal Society for the Protection of Birds
- Royal Yachting Association
- Suffolk County Council
- Suffolk and Essex Coast and Heaths National Landscape Partnership
- Suffolk and North East Essex Integrated Care Board
- Tendring District Council
- The Crown Estate
- The Cruising Association
- The Wildlife Trusts
- UK Chamber of Shipping
- UK Health Security Agency

Although Essex County Fire and Rescue Service, Kent and Essex Inshore Fisheries Conservation Authority, the Port of Felixstowe and the Royal Yachting Association have not registered as IPs, a SoCG should nonetheless still be developed. The ExA requests

that the Applicant initiates contact with these organisations for the preparation of a SoCG and also notifies them of this Procedural Decision.

### **3) Natural England Relevant Representation [RR-243]**

#### Principal Areas of Disagreement Summary Statement (PADSS)

In the light of Natural England's early identification of PADSS as part of its RR [RR-243] the ExA has made the Procedural Decision that Natural England's PADSS should be treated as being a 'live' document to be updated during the Examination indicating what progress, if any, has been made to address areas of disagreement. While Examination timetabling will be finalised following the holding of the Preliminary Meeting, Natural England should work on the basis that it will be expected to submit the first substantive PADSS update by the Examination's midpoint. Thereafter, Natural England should be prepared to submit a PADSS update at any subsequent Examination deadline to be specified in the Examination Timetable with the Final PADSS to be submitted at the Final Deadline.

#### Additional Ecological Information

Taking into account Natural England's (NE) RR, the ExA requests the following:

- i. As per NE RR Ref F26 a full in combination assessment of impacts for 'guillemot' at the Farne Islands Special Protection Area (SPA) (noting Nature Scotland, should be consulted on predicted impacts to Scottish SPAs).
- ii. The Applicant's views as to whether updated without prejudice derogation cases for 'guillemot and razorbill' at the Flamborough and the Filey Coast SPA are necessary factoring NE RR Ref point F31.
- iii. The Applicant's response to NE RR Ref F24 and P29 seeking (a) an updated impact assessment incorporating the most recent count data to calculate baseline mortality for all ornithology given the Five Estuaries and North Falls Offshore Windfarm projects are expected to be in Examination concurrently, i.e., including the breeding population of 'lesser black backed gull' at the Aldre Ore SPA and (b) compensation.
- iv. Updated information on the Stour and Orwell SPA to inform the Examination.
- v. As per NE RR Ref E1, E6, E14, E38 and P15 further information is requested for: (a) the presentation of the cumulative impact significance for each species; (b) the recalculation of piling scenarios; (c) a Population Consequences Disturbance update for marine mammals including on the Southern by North Special Area of Conservation and having regard to any reduction to the disturbance to harbour porpoise; (d) all mitigation.

All to be submitted at the earliest opportunity, and the Applicant and NE should work on the basis that this information will be required by the initial stages of the Examination. The Applicant **MUST** provide an update on progress in complying with this request including anticipated submission date or dates by **16 December 2024**.

### **4) The preparation and submission of Local Impact Reports (LIRs) by Local Planning Authorities**

As indicated above, the Examination Timetable will be confirmed by the ExA following the holding of the Preliminary Meeting. However, in the meantime the Local Planning Authorities who will be submitting LIRs should work on the basis that those reports will be required for submission by the first deadline of the Examination period which will be specified in that timetable. In connection with the submission of the LIRs the ExA has



made the Procedural Decision that each LIR must have appended to it copies of all the relevant adopted Development Plan policies along with the explanatory/supporting text for those policies. Any Local Planning Authority that fails to comply with this Procedural Decision will be requested by the ExA to resubmit its LIR with the missing policies added.

### **5) The submission of Land Rights Trackers by the Applicant**

The ExA is mindful of the Applicant's submission of a Schedule of Negotiations [APP-010] and a Statutory Undertakers Schedule [APP-011]. Having regard to the contents of those documents, and the comments relating to Land Rights issues included in the submitted RRs, the ExA has made the Procedural Decision that the Applicant should submit two Land Rights Trackers, one for Affected Persons (AP(s)) who are not Statutory Undertakers and a second tracker for Statutory Undertakers (SU). Following the submission of the initial trackers, they must be updated by the Applicant at each subsequent Examination deadline, explaining, amongst other things, what engagement there has been and how negotiations have progressed since the previous versions of the trackers were submitted. APs will have the opportunity to comment on the contents of the Land Rights trackers at the next appropriate Examination deadline. The trackers should include the information listed below in a tabular form for each land interest which had not already been acquired at the date of the Application's submission. The trackers should be completed on the basis that for so long as there is non-agreement that will amount to an objection by an AP. The trackers should include:

- The objection number and name of the party concerned.
- The SU tracker must also include the nature of the undertaking and whether s127 or 138 PA2008 is engaged.
- Land Plot number used in the Book of Reference (BoR).
- The Land Plan reference used on the Land Plans.
- For each Land Plot, the reason for Acquisition or Temporary Use including the identification of the relevant Work Number(s) together with a summary descriptor for the proposed acquisition of a freehold or the acquisition for a right(s).
- Description of the land rights sought, including any restrictive covenants.
- Whether the person with an interest in the land is within Category 1 and is an owner, lessee, tenant or occupier.
- Whether that person with an interest in the land is within Category 2 and is a person interested in the land or has the power to sell or convey the land or to release the land.
- Whether the person or organisation with an interest in the land is represented or unrepresented and if represented the name of the company or individual providing representation should be stated.
- The reference number assigned to the IP or AP.
- The Examination Library (EL) reference number assigned to each Relevant Representation.
- The EL reference number assigned to each Written Representation.
- The EL reference number assigned to any other relevant document submitted during the Examination.
- The EL reference number assigned to all of the Applicant's responses to APs' submissions, with specific reference to the paragraph number or section in the response document.
- Whether the powers sought relate to permanent or temporary rights, and the likely duration of any temporary rights, such as Temporary Possession.
- The identification of any Special Category land.

- An account of all the negotiations undertaken prior to and following the Application's submission, including the dates for when there has been engagement between the parties, highlighting outstanding objections; any reasons for why negotiations may not have been progressing and an explanation for any disagreements including indicative timescales for any progress that it anticipated.

The trackers are likely to contain a lot of information which will need to be presented in a useable form. Accordingly, the ExA has made the Procedural Decision that the Applicant should submit a blank template for the required trackers in its preferred form by **16 December 2024** for review and comment by the ExA. Thereafter, the ExA will provide comments about the blank templates prior to them being fully populated by the Applicant before being submitted in initial completed forms at or before a deadline date that will be identified in the Examination timetable and to be thereafter updated during the Examination and submitted in their **final** forms at the **Final Deadline** to be specified in that timetable.

#### **6) Revisions to Application documents and other documents**

In the event of it being necessary for a) the Applicant to submit further amended Application documents, for example the draft Development Consent Order; or b) the Applicant or another IP to submit an amended document, then clean and tracked changed versions of the document should be submitted concurrently so that any revisions can readily be identified by all parties, the Secretary of State and the ExA.

#### **7) Request for a National Policy Statement (NPS) Accordance Table**

The ExA acknowledges that the individual Chapters 8 to 34 (inclusive) of the Environmental Statement include a NPS Assessment Requirements Table. Furthermore, the Design and Access Statement (DAS) [APP-235] at Section 7.2 includes Accordance Tables 7.1, 7.2 and 7.3 setting out compliance with relevant design policy paragraphs of EN-1, EN-3 and EN-5 respectively. In addition, the Planning Statement [AS-004] Section 5 presents an overview of the Proposed Development's accordance with key policies of the NPSs. However, to facilitate the IPs ease of navigation of NPS policy compliance during the Examination, the ExA considers that this information should be collated into a single document.

The ExA therefore requests the Applicant to provide a revised NPS Accordance Table in the same format as that included in the DAS but also incorporating policy compliance with all relevant NPS policies as they relate to the Key Topics set out in the Planning Statement and the individual ES Chapters. We request that the Applicant provides the first version of an NPS Accordance Table collated in a single document by the first deadline of the Examination period that will be specified in the Examination Timetable. The Examination Timetable will also include provision for subsequent versions to be updated at various deadlines to be specified in that timetable. The document should provide an assessment of the Proposed Development's conformity with the NPSs which have effect during the Examination.

#### **8) Request for an update on Option 3 – Offshore Electrical Connection**

The Planning Statement [AS-004], paragraph 2.1.11 includes reference to: "*Option 3: offshore electrical connection, supplied by a third-party*" and provision for this option is included within the draft DCO. Please provide an update on the progress with and the feasibility of this option by **16 December 2024**.

If you have any queries on these matters, please do not hesitate to contact our office using the contact details at the head of this letter.

Yours sincerely,

*Wendy McKay*

Wendy McKay

**Lead Panel Member for the Examining Authority**

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