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29 October 2024

Dear Ms Dowling,

**Dogger Bank South Offshore Wind Farms Project**

**PINS Reference: EN010125**

**Dogger Bank South Offshore Wind Farms Project – Applicants’ Response to Rule 9 and Rule 17 Letter [PD-005]**

This letter is provided in response to the Examining Authority’s (“ExA”) Rule 9 and Rule 17 Letter dated 22 October 2024 [PD-005] (the “Letter”). The Applicants note the ExA’s concerns raised in the Letter (and at the Preliminary Meeting on 22 October) in respect of the Applicants’ offshore ornithology assessment update and the Habitat Regulations Assessment (HRA) compensation proposals. The Applicants have carefully considered concerns highlighted and have sought to address those concerns by providing a response below summarising and clarifying the information already included as part of the Application and providing further information included as additional submissions being submitted alongside this letter, namely:

- Response to Natural England’s Relevant Representations (Appendix G & H)
- Project Level Artificial Nesting Structure (ANS) Site Selection Report
- Project-Level Kittiwake Compensation Plan (Revision 2)
- Guillemot [and Razorbill] Compensation Site Shortlist Refinement Report (Redacted)
- Guillemot [and Razorbill] Compensation Plan (Revision 2).

The Applicants consider that information contained in the Application, as clarified in this response, together with the updates provided alongside this submission (which were

originally targeted for Deadline 1 on the 8th November) offer the necessary clarity and detail, to provide the reassurance to the ExA that the Preliminary Meeting can be resumed and the Examination allowed to proceed in a timely manner within the statutory timescales, allowing for a fair and accurate understanding of offshore ornithological information and assessment and a sufficiently detailed HRA compensation case.

### **Maturity of assessment**

The Applicants note that in the Letter **[PD-005]** the ExA refers to a '*major update*' to the ornithological assessment that is forthcoming. The Applicants would like to reassure and clarify to the ExA that, whilst the updated documents will be lengthy, the actual changes will be modest to account for Natural England (NE) preferences, to address comments raised in their Relevant Representation **[RR-039]** and to account for new guidance (as set out in **[AS-006]**). Fundamentally these updates will:

- Not change the EIA or HRA conclusions for kittiwake and are unlikely to change the numbers of impacted birds in the assessments.
- Not change the EIA or HRA conclusions for guillemot, although numbers of impacted birds will increase in line with new NE guidance and to account for comments raised by NE in their Relevant Representation **[RR-039]**.
- Not change the EIA or HRA conclusions for razorbill, although numbers of impacted birds will increase in line with new NE guidance.
- Provide updates to the in-combination assessments (based upon information unavailable at submission); such updates are being requested for all offshore wind farms (OWFs) currently in examination.

The Applicants note that the updates to assessments due to the new NE guidance are being requested for all OWFs currently in examination.

In addition, as stated at the Preliminary Meeting, the proposed offshore change (notified to the ExA on 8 October **[PDA-012]**) would reduce indirect impacts upon all ornithological features, but would not change the EIA or HRA conclusions.

To assist the ExA further in understanding the nature of the updates being undertaken to the assessments, full responses to the NE RR **[RR-039]** on offshore ornithology (Appendices G and H) are provided with this submission (**document ref: 10.17**). The updated assessments referred to in the Applicants' responses will be submitted in **mid-November**.

Whilst the Applicants appreciate that the agreement of impact totals for kittiwake and auks is crucial to determine the quantum of compensation required, variations of the totals will not affect the nature or suitability of the measures proposed within the compensation plans as presented within the accepted application. The Applicants consider that the ornithology assessments provided within the original Application are comprehensive and robust. The Applicants were unaware, until receiving NE's relevant representation **[RR-039]**, that NE would not consider, for example, the displacement assessments, purely because the new NE Guidance (published in March 2024, after the assessments were completed) was not used. The Applicants' assessments were carried



out in line with all relevant legislation and guidance available at the time. It is standard practice for applicants to update assessments during the examination process to reflect new policies and guidance, ensuring that the final position presented to the ExA by the close of examination is as current as possible. However, there is always a point before submission when the assessments must be finalised. It would be neither appropriate nor necessary to delay submission solely due to the timing of updated guidance, particularly when updates can be fully considered during the examination process and could be raised on a broad range of topics within the Environmental Statement.

Given the nature of the proposed updates (with no implications for assessment conclusions), the Applicants would like to reassure the ExA that no major updates to conclusions are intended, rather the Applicants are providing a consolidated response to NE comments in the most comprehensive and accessible way (i.e. in single updates to both the RIAA and ES, rather than multiple notes or written responses). The Applicants have discussed the format of the updated documents with Natural England (24<sup>th</sup> October 2024) in order to ensure this aligns as closely as possible with their expectations. The Applicants are cognisant of interested parties' resourcing challenges and this approach is intended to assist relevant stakeholders to undertake a timely review of the updated documentation as it is thought that a single review encompassing all updates is likely to be a more efficient use of time.

### **Compensation proposals**

In response to the ExA comment in their Rule 9 and Rule 17 letter [PD-005] stating that:

*“the HRA compensation proposals should be developed to a **reasonable level of detail** prior to the **completion** of the Examination to give all parties the necessary level of comfort **that a site or sites have been identified**, that **the proposed measures are reasonable and sufficient**, and that they could be **adequately secured and delivered**.”*

The Applicants have summarised the position in relation to the compensation proposals for Kittiwake and Guillemot [and Razorbill] below and additional information is submitted alongside this letter to support the positions set out. The Dogger Bank SAC compensatory measures are not addressed in this letter as delivery of agreed measures are being led by Defra as outlined in the Round 4 Dogger Bank Strategic Compensation Plan [APP-060]. Ministerial Statement and updated guidance is expected from Defra and DESNZ shortly regarding this matter to provide confidence regarding the strategic compensation for benthic impacts. The Applicants agree with NE that the focus of the examination should therefore be on the scale of the compensation required and the relevant legal provisions in the DCO, which the Applicants understand will be addressed in the Ministerial Statement and guidance.

## **Kittiwake**

### ***Reasonable level of detail***

The Strategic Plan **[APP-054]** sets out the measure proposed, number of offshore ANS, likely quantum of compensation and design principles. These proposals were developed over a period of 18 months via extensive consultation with all key stakeholders, as directed by the SoS and signed off by the HRA Competent Authority. The Project-Level Kittiwake Compensation Plan **[APP-052]** provides further detail on how this measure will be implemented including the programme, delivery mechanisms and further information on site selection (using the ecological parameters already presented). This is the first time an approved Strategic Plan has been in place pre-application and gives confidence that what is included at the project level is appropriate.

The Applicants intend to keep the Outline Kittiwake Compensation Implementation and Monitoring Plan (CIMP) **[APP-054]** under review during examination and will update relevant details if appropriate as the compensation measures are further progressed. The final CIMP will be developed in detail post-consent with oversight from the Kittiwake Steering Group and will provide the final agreed details of delivery, monitoring and management (and adaptive management processes) of the compensation, based on the details already included in the Outline Plan. The timings for development of this Plan are very similar to the timelines proposed by other consented offshore wind farm (OWF) projects developing compensatory measures and this approach has been accepted by the Secretary of State on all recently consented OWFs. The approval of the final Plan is secured in Part 2 of Schedule 18 to the Draft DCO **[APP-027]**.

### ***That a site or sites have been identified***

The Project-Level Kittiwake Compensation Plan **[APP-052]** identified multiple potential sites which were considered and added to by the Applicants on which an ANS could be located with a site selection process subsequently undertaken. This updated process is presented in the Project-level Artificial Nesting Structure (ANS) Site Selection Report **(Document ref: 10.19)** submitted at the same time as this letter. The updated Project-Level Kittiwake Compensation Plan (Revision 2) submitted alongside this response includes a summary of these updates, a summary of ongoing engagement and further refinement of the delivery programme for a project led ANS within these selected locations. The document also notes the potential for the Applicants to take on the final design and installation works of the offshore ANS developed for Hornsea Project FOUR which has already received its marine licence (MLA/2023/00390) and details regarding the collaborative ANS with ODOW.

### ***The proposed measures are reasonable and sufficient***

The measure itself and the quantum of compensation to be provided were agreed as part of the Strategic Plan **[APP-054]** and the aforementioned Offshore Ornithology Assessment Updates will not cause required quantum of compensation to extend beyond this agreed level. The Applicants consider that the Strategic Plan specifically allowed for the refinement of the quantum of compensation to be determined in examination of the



Projects (and ODOW) and thus specified a range for the nest spaces which all parties agreed could be delivered by two offshore ANS. A further selection of sites will be undertaken in mid-December 2024 following the conclusion of ongoing studies in advance of preparation for site investigation works programmed for Q2 2025.

### **Adequately secured and delivered**

The Applicants are in discussion with TCE on the proposed locations to ensure there are no spatial conflicts and to secure seabed rights ahead of any marine licence process. The Project-level Kittiwake Compensation Plan **[APP-052]** provides a programme for delivery within the required timescales (including ODOW earlier delivery). The Applicants highlight that the onshore ANS installed by RWE (Kittiwakery) at Gateshead has been in place since 2023 and is showing positive signs of colony establishment. With regards to the potential use of the Gateshead ANS as adaptive management, NE have stated within their relevant representations that this could be considered to form part of a wider compensation package. Information on the onshore ANS is included within the Project-Level Kittiwake Compensation Plan (Revision 2) submitted alongside this letter.

As has been the case in all other OWFs that have been consented with a derogation case, the DCO is to be used to secure the delivery of the compensation measures within the required timescales and to ensure accordance with the requirements of the Habitats Regulations and related policy and guidance. The Draft DCO **[APP-027]** for the Projects includes provisions at Schedule 18 which ensure that the measures are adequately secured. It is therefore imperative on the Applicants to deliver the compensation measures within the agreed timescales, thus protecting the public interest in the delivery of the measures.

### **Auks**

#### ***Reasonable level of detail***

The Applicants provided details of potential locations and a programme of works in the Guillemot [and Razorbill] Compensation Plan **[APP-056]** within the Application and have progressed planning for delivery since the DCO submission. The Applicants have provided an update on site identification alongside this response in the Guillemot [and Razorbill] Compensation Site Shortlist Refinement Report (Redacted) (**document ref: 10.20**). This report is being submitted at present in partially redacted form due to highly commercially sensitive information contained therein. A confidential, unredacted version has been shared with NE on the date of this letter to demonstrate the maturity of the Applicants' compensation proposals.

The information in the Guillemot [and Razorbill] Compensation Site Shortlist Refinement Report (redacted) represents the combined results of extensive feasibility surveys (boat based and walkover) undertaken in summer 2024 and landowner consultation. This work has confirmed the presence of auks, rats and available habitat for the creation of rat free nesting spaces at a number of locations. The Applicants intend to undertake pre-eradication surveys this winter subject to landowner agreement which would provide the

site-specific detail required for how an eradication would take place. This information will be available prior to the completion of the Examination.

The Applicants intend to keep the Outline Guillemot [and Razorbill] CIMP **[APP-057]** under review during Examination and will update relevant details if appropriate as the compensation measures are further progressed. The final CIMP will be developed in detail post-consent with oversight from the Guillemot [and Razorbill] Steering Group and will provide the final agreed details of delivery, monitoring and management (and adaptive management processes) of the compensation, based on the details already included in the Outline Guillemot [and Razorbill] CIMP **[APP-057]**. The timings for development of this Plan are very similar to the timelines proposed by other consented OWF projects developing compensatory measures and this approach has been accepted by the Secretary of State on all recently consented OWFs. The approval of the final Plan is secured in Part 3 of Schedule 18 to the Draft DCO **[APP-027]**.

***That a site or sites have been identified***

As outlined above, the Applicants provided a list of potential locations for eradication schemes at submission and have provided an update following further extensive surveys and landowner consultation since submission. This process has refined the short-list to 2 main locations, with some potential back-ups, that can deliver the necessary compensation quantum for Guillemot and Razorbill as outlined in the Guillemot [and Razorbill] Compensation Site Shortlist Refinement Report (Redacted) **(Document ref:10.20)** regardless of any changes to compensation quantum arising from the Offshore Ornithology Assessment Updates. The Applicants are working with landowners to secure permission for pre-eradication surveys this winter to inform the necessary measures to deliver an effective eradication at the sites. The Applicants have secured Areas of Special Scientific Interest (ASSI) consent<sup>1</sup> from the Northern Ireland Environment Agency for the pre-eradication surveys at Sheep Island with the support of the landowner.

The Applicants note the letter from National Trust to the ExA dated 29 October 2024 which has been shared with the Applicants on the date of this letter. The Applicants have been actively engaging with National Trust in respect of site access for Sheep Island and Worm's Head since June 2024. Since then, ongoing discussions with the regional team suggested that site access was imminent following ASSI consent as demonstrated by correspondence received from National Trust and recorded in Appendix A of the Guillemot [and Razorbill] Compensation Site Shortlist Refinement Report (Redacted) **(Document ref:10.20)**. The Applicants are surprised by the National Trust's subsequent late departure (in their letter of 29 October 2024) from their prior position reflected in previous communications with the Applicants. The Applicants will continue to engage with National Trust regarding future pre-eradication surveys at Sheep Island and potential survey activities at Worm's Head in 2025. The Applicants would also note that the Guillemot [and Razorbill] Compensation Site Shortlist Refinement Report (Redacted)

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<sup>1</sup> The consent process required to undertake activities within an Area of Special Scientific Interest in Northern Ireland



**(Document ref:10.20)** sets out a number of site options which provide several deliverable options from which site(s) can be agreed prior to the completion of the Examination.

***The proposed measures are reasonable and sufficient***

The measure itself has been recognised by Defra as one to be taken forward for consideration by the Collaboration in Offshore Wind Strategic Compensation (COWSC)) initiative. Eradication is recognised as the only measure likely to deliver compensation at the scale required. Although the final quantum of compensation required is subject to agreement of the HRA assessment (which is being revised, inter alia due to new NE Guidance) and the wider determination of AEIOI for razorbill (in-combination with multiple projects also currently in examination), the Applicants' site investigations (have determined that several sites could deliver well over the quantum stated in the Guillemot [and Razorbill] Compensation Plan **[APP-056]**).

***Adequately secured and delivered***

The Applicants are in discussion with the relevant parties to secure agreement to undertake pre-eradication surveys, an eradication scheme and subsequent monitoring and management.

As has been the case in all other OWFs that have been consented with a derogation case, the DCO is to be used to secure the delivery of the compensation measures within the required timescales and to ensure accordance with the requirements of the Habitats Regulations and related policy and guidance. The Draft DCO **[APP-027]** for the Projects includes provisions at Schedule 18 which ensure that the measures are adequately secured. It is therefore imperative on the Applicants to deliver the compensation measures within the agreed timescales, thus protecting the public interest in the delivery of the measures.

**Conclusion**

The Applicants consider that the assessments provided within the Application are comprehensive and robust and comply with the relevant EIA and HRA legislative requirements. As stated above, it is standard practice to update assessments as part of the examination process to take account of updated advice and the changing in-combination status. The updates are not expected to alter the EIA or HRA conclusions presented in the submitted application, nor will they affect the suitability of the compensation measures being progressed. The Applicants submit that the timelines proposed for the submission of the updated information will allow sufficient time within the six-month Examination for all parties to reach a full and reasoned conclusion to ensure the adequacy of the assessments.

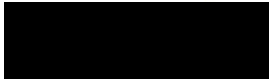
In terms of the maturity of compensation proposals, the Applicants have sought to reassure the ExA that it has sufficient information on the HRA compensation proposals to demonstrate that they are already well-developed. In the Applicants' view, the measures, combined with the legal protections in the draft DCO, are already at the point where the DCO could be granted in compliance with the relevant policies in NPS EN-3, particularly



given the approved Competent Authority Strategic Plan [APP-054] for kittiwake and the siting options for both kittiwake and auks. The measures will be further developed prior to the completion of the Examination to give all parties further comfort on siting, that the proposed measures are reasonable and sufficient, and that they could be adequately secured and delivered. The Applicants consider that the updates provided alongside this Letter demonstrate the progress made since the DCO submission and are in line with the progress expected and timeline communicated to stakeholders pre-application. The Applicants therefore respectfully submit that there is no reason to further delay the start of the Examination on the basis of the maturity of the compensation proposals.

— I trust the above information is useful to inform further decisions regarding the programme for DCO Examination. Please do contact me on the contact details below or other known members of the Applicants' team should you have any questions.

Yours sincerely,



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