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Eleri Wilce  
Rampion Offshore Wind Limited  
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Coventry  
CV4 8PB

Ref : EN010032

29 April 2021

Dear Ms Wilce,

**PLANNING ACT 2008  
APPLICATION FOR A NON-MATERIAL CHANGE TO THE RAMPTION (OFFSHORE WIND  
FARM) ORDER 2014 (SI NO. 2014/1873)**

1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the Application (“the Application”) which was made by Rampion Offshore Wind Limited (“the Applicant”) on 22 October 2020 for a change which is not material to the Rampion (Offshore Wind Farm) Order 2014 (“the 2014 Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008 (“the 2008 Act”). 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 original application for development consent under the Planning Act 2008 was granted on 16 July 2014 by the Secretary of State for Energy and Climate Change. The 2014 Order as granted, gives development consent for the construction, operation and maintenance of an offshore wind turbine generating station in the English Channel approximately 13km off the Sussex Coast. The consent provides for up to 175 wind turbines with a gross electrical capacity of up to 700MW up to two offshore substations, and also includes inter-array cables between the turbines and substations, export cables and onshore electrical works consisting of underground cables to a new converter station that would be constructed (together “the Development”), at Bolney in West Sussex.
3. The Applicant is seeking consent for a change to the 2014 Order to allow:
  - The reduction of the extent of the diversion of Footpath 8T that was authorised under the 2014 Order; and
  - The alignment of the route of the temporary footpath (which is currently in use) with the co-ordinates of the Footpath’s permanent diversion.

## Summary of the Secretary of State's decision

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make non-material changes to the 2014 Order, so as to give effect to the changes requested. However, as the existing Order already allows the applicant to extinguish the previous right of way and create a new footpath, some of the amendments requested by the Applicant have not been made (see below, paragraphs 26 to 29). This letter is the notification of the Secretary of State's decision in accordance with regulation 8 the 2011 Regulations.

## Consideration of the materiality of the proposed change

5. The Secretary of State has given consideration as to whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the development consent order ("DCO") as originally made.
6. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations.
7. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the then Department for 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. First, given the range of infrastructure projects that are consented through the 2008 Act, 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. Second, 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:
  - (a) whether an update would be required to the Environmental Statement (from that at the time the 2014 Order was made) to take account of new, or materially different, likely significant effects on the environment;
  - (b) 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");
  - (c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the 2014 Order; and
  - (d) the potential impact of the proposed changes 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).

Third, that 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.

8. The Secretary of State has considered the change proposed by the Applicant against the four matters given in (a), (b), (c) and (d) above.

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

- (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. In light of the analysis supplied by the Applicant and responses to the consultation that have raised no concerns regarding environmental issues, the Secretary of State has, therefore, concluded that no update is required to the ES as a result of the proposed amendment to the 2014 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 not likely to be a significant effect on any Natura 2000 site (now known as the National Site Network) either alone or in combination with any other plans or projects as a result of the proposed change and therefore an Appropriate Assessment 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 EPSs 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 as all required land is in the ownership of the Applicant.
  - (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.
9. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggest that the changes considered in this letter is a material change.
10. 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 non-material changes.

### **Consultation and responses**

11. The Secretary of State provided written consent under Regulation 7(3) of the 2011 Regulations that not all of the persons prescribed in Regulation 7(2) needed to be consulted in relation to the Application. Specified parties such as the local planning authority, Natural England and the Environment Agency were notified of the Application. The list of consultees contacted regarding the Application included all those who were deemed to have an interest in the Application and any other persons who may be directly affected by the changes proposed in the Application.
12. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations and the Application was published for two successive weeks in the local press, copies of the regulation 6 notice and a map showing the diversion were put up on site at key locations across the footpath network, and the Application was made publicly available on the Planning Inspectorate's website, such that there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate.
13. Representations were received from: Cadent Gas, ESP Utilities, Historic England, Mid Sussex District Council, National Grid, OpenReach, Twineham Parish Council, Vodafone, and West Sussex District Council. National Grid and Cadent Gas initially raised objections to the proposals; these objections were withdrawn following the receipt of additional information from the Applicant. Vodafone submitted an objection on the basis that they required written assurances as to the safeguarding of their apparatus and reimbursement of costs for any works necessary. OpenReach contacted the Applicant with similar concerns

regarding their apparatus but did not lodge a formal objection. The Secretary of State is satisfied that the Applicant has supplied Vodafone and OpenReach with adequate assurances regarding this, and also note that no works are required that will impact the apparatus in question. Vodafone have subsequently withdrawn their objection and no other objections were raised.

## **Environmental Impact Assessment**

14. The Secretary of State has considered whether the Application would give rise to any new significant effects or materially different effects when compared to the effects set out in the Environmental Statement for the development authorised by the 2014 Order.
15. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow him to make a determination on the Application.
16. The Secretary of State has considered all relevant information provided. 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 environmental statement for the development authorised by the 2014 Order and as such considers that there is no requirement to update the Environmental Statement.
17. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

## **Habitats**

18. The Secretary of State has considered the relevant and important policies in respect of the United Kingdom's obligations 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 a European site, as defined in the Habitats Regulations. 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 if he has ascertained that it will not adversely affect the integrity of a National Site Network.
19. The Secretary of State has considered the information submitted in the Application and is satisfied that the proposals do not alter the conclusions set out in the Environmental Statement and HRA for the 2014 Order and the Application will not have a likely significant effect on any National Site Network site and no Appropriate Assessment is therefore required.

## **General Considerations**

### Equality Act 2010

20. 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 unlawful 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 and sexual orientation; gender reassignment; disability; marriage and civil partnership;<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.

21. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010, and is satisfied that there is no evidence that granting the changes considered in this letter will affect adversely the achievement of those objectives.

#### Human Rights Act 1998

22. The Secretary of State has considered the potential for the proposed changes to the Development to infringe upon human rights in relation to the European Convention on Human Rights. The Secretary of State considers that the grant of the changes considered in this letter would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

#### Natural Environment and Rural Communities Act 2006

23. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular 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 the Application considers biodiversity sufficiently to accord with this duty.

#### **Secretary of State's conclusions and decision**

24. The Secretary of State has considered the ongoing need for the development. The Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3) both set out that for the UK to meet its energy and climate change objectives, there is continuing need for electricity generating plants of the type which is the subject of this application. The Secretary of State considers, therefore, that the ongoing need for the project is established given the contribution it will make to securing energy supply. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Energy White Paper, Powering our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application. The Secretary of State considers, therefore, that the ongoing need for the Development is established and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.
25. The Secretary of State has considered the nature of the proposed change, noting that it would have no additional significant environmental effects. He notes that the proposed change to the authorised development would not result in any further environmental impacts

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

and will remain within the parameters consented by the 2014 Order. He concludes that the proposed change is not material. Having considered the effects of any change and the benefits of the change in facilitating the deployment of the authorised development, the Secretary of State has concluded that it would be appropriate and advantageous to authorise changes to provide for revisions to the alignment of the route of the new footpath.

26. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the changes to the 2014 Order as set out in the Application. The Secretary of State is satisfied that the change requested by the Applicant is not a material change to the 2014 Order, and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the 2014 Order so as to give effect to the changes proposed in the Application and modified as set out below.

### **Modifications to the draft Order proposed by the Applicant**

27. The Secretary of State has made some modifications to the draft Order proposed by the Applicant.
28. The Secretary of State has not accepted the amendment at paragraph 2 “Interpretation” to substitute a new footpath plan for that originally certified but has instead created the definition “revised footpath stopping up and diversion plan” to be used as appropriate.
29. The Secretary of State has not accepted the amendments proposed by the Applicant to Article 17, given that the DCO already allows the Applicant to extinguish the previous right of way once the new footpath is provided in accordance with plans approved by the Highways Authority. The Secretary of State does not consider that sufficient justification has been provided to explain the need for amendment in the terms sought. Article 17 now refers to the “revised” footpath and stopping up plan.

### **Challenge to decision**

30. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

### **Publicity for decision**

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

Yours sincerely,



Gareth Leigh  
Head of Energy Infrastructure Planning

## 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 Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/rampion-offshore-wind-farm/?ipcsection=overview>

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)