

Application by Five Estuaries Offshore Wind Farm Limited for an Order Granting Development Consent for the proposed Five Estuaries Offshore Wind Farm

The Examining Authority's schedule of proposed changes to the draft Development Consent Order (dDCO)

Issued on 3 February 2025

This document sets out the Examining Authority's (ExA) proposed changes to the latest version of the Applicant's dDCO submitted at Deadline 5 of the Examination [REP5-007]. Suggested deletions of text are shown using double strike through, eg ~~abcd~~, while any changes to or insertions of text are should in bold black text, eg **abcd**.

The numbering for Articles and Requirements etc used below follows that used in the Deadline 5 version of the dDCO. The Applicant **MUST** renumber the Articles and Requirements, as necessary, when it issues its final version of the dDCO.

Any comments you may wish to make on this schedule of changes to the dDCO should be submitted by Examination Deadline 7.

	ExA's Proposed Changes	ExA's Reasoning
General		
References to authorised development and project	Replace all references to " <i>authorised project</i> " with " <i>authorised development</i> "	There are 267 references to authorised development and 11 references to authorised project, with the latter phrase not being a defined in Article 2 or other parts of the dDCO. In the interests of precision and consistency references to "authorised project" should be replaced with "authorised development" throughout the entirety of the dDCO.
Preamble		
Infrastructure Planning	The first footnote (b) on page 6 should be a page 5 footnote.	Format error - Applicant to check all footnote entries.



(Examination Procedure) Rules 2010(b).		
Articles		
Article 2	"cable" means up to 400 kilovolt 400 kilovolts cables"	Convention error. Other occurrences in Schedule 1 should also be corrected
Article 38	"... (2) The undertaker may fell or lop any tree within or encroaching upon the Order limits that is subject to a tree preservation order and is not listed in Schedule 12 Part 1 (trees subject to tree preservation orders) and for which a tree preservation order which was made after 12 March 2024, or cut back its roots, if it reasonably believes it to be necessary in order to do so in order to prevent the tree— (a) from obstructing or interfering with onshore site preparation works the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or (b) from constituting an unacceptable source of danger (whether to children or to other persons) a danger to persons within the authorised development ".	Grammatical changes to provide precision and clarity as to the purpose of Article 38 (2). (b) To be consistent with Article 37 (2)(b)
Schedule 1 Authorised Development		
Part 1 Authorised Development	"Work No. 4A B — Construction of a temporary construction compound and laydown area (Beach Works TCG Temporary Construction	There is no Work No. 4A showing on the most recent Revision C of Work Plans Onshore [REP-004].



	Compound), improvement and use of existing access routes including creation of construction access to Work Nos. 3, 4, and 5, works to junctions and visibility splays, temporary construction working areas and laydown area.”	Only time TCC is used as a short form in the dDCO, as there is no interpretation provided for this abbreviation set out in full.
Part 1 Authorised Development	Work No. 9 — Installation of up to two buried cable circuits within cable ducts between Work No. 8 and Work No. 10 from Thorpe Road to Swan Road, approximately 4890 metres; cable ducts, joint bays, trenchless installation technique pit works including the creation of entrance and exit pits, and cable trenching works; construction of a haul road, temporary construction accesses and working areas and laydown area, creation and improvement of accesses including works to junctions and visibility splays.	There is no Work No. 9 showing on the most recent Revision C of Work Plans Onshore [REP-004]. Applicant to correct number referenced in Schedule 1 or amend Work Plans Onshore for consistency.
Part 1 Authorised Development	Work No. 18 — Compensatory works for Lesser Black Backed Gull comprising:	There is no Work No. 18 showing on the most recent Revision C of Work Plans Onshore [REP-004]. Applicant to correct number referenced in Schedule 1 or amend Work Plans Onshore for consistency.
Part 1 Authorised Development	Any associated development in connection with Work Nos. 1 to 3 (new subheading) “and any Any associated development and in connection with Work Nos. 1 to 3 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or	Introduction of subheadings and other minor changes to aid precision.



	<p>expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including— ... (h) erection of temporary piled structures during construction.”</p> <p>Any associated development in connection with Work Nos. 4 to 18 (new subheading)</p> <p>“and in In connection with Work Nos. 4 to 18 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including— ...”</p>	
Part 1 of Schedule 2 Requirements		
Requirement 3 (Aviation safety)	<p>“... (2) ... the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph sub-paragraph and ...</p>	References to “ <i>paragraph</i> ” rather than sub-paragraph are inconsistent with the terminology used in other requirements in Schedule 2.



	(3) The lights installed in accordance with paragraph sub-paragraph (1) will be operated ..."	
Requirement 5 (Onshore substation works etc)	<p>"5-(1) Construction of Work No. 15B (the onshore electrical substation) must not commence until details of— ...</p> <p>d) external hard surfacing materials;</p> <p>e) the dimensions, external colour and materials used for the buildings;</p> <p>f) security fencing, height, colour and materials;</p> <p>(2) The details submitted under sub-paragraph (1) of this requirement must be in accordance with sub-paragraph with sub-paragraph (3) and substantially in accordance with the onshore substation design principles document.</p> <p>(3) In relation to Work No. 15B (the onshore electrical substation) — ..."</p> <p>(4) Work No. 15B must be carried out in accordance with the details approved under sub-paragraph (2) (1).</p> <p>(5) Work No. 15B must not be commenced until a written landscaping scheme and associated work programme in accordance with the outline</p>	<p>(1) Changes would aid precision.</p> <p>(2) Typographic error requiring correction.</p> <p>(3) Superfluous text, with Work No. 15B having been clarified in sub-paragraph (1).</p> <p>(4) Should be sub-paragraph (1) rather than (2) because the details to be accorded with would be approved under sub-paragraph (1) not (2).</p> <p>(5) Th reference to the "<i>ecology</i>" needs to be changed to "<i>ecological</i>" for reasons of precision in order to be consistent with the title of the submitted control document – the "<i>outline Landscape and Ecological Management Plan</i>" (oLEMP) [REP2-022] or any subsequent revisions made to the oLEMP during the remainder of the Examination.</p>



	landscape and ecology ecological management plan for Work No. 15 ...”	
Requirement 9 (Onshore archaeology)	“(1) No stage of the onshore works may commence until, for that stage, an archaeological written scheme(s) of investigation in accordance with the outline onshore written schemes of investigation as appropriate ...”	Pluralised to be consistent with sub-paragraph (2).
Requirement 10 (“Landscape Ecology management plan”)	<p>“Landscape and Ecology ecological management plan</p> <p>10-(1) No stage of the onshore works may commence until for that stage a written landscape and ecology ecological management plan in accordance with the outline landscape and ecology ecological management plan as appropriate for the relevant stage, has been submitted to and approved by the relevant planning authority.</p> <p>(2) The landscape and ecology ecological management plan(s) submitted under sub-paragraph (1) must include an implementation timetable and must be implemented as approved as applicable in each stage.</p> <p>(3) Onshore site preparation works must only take place in accordance with the relevant details set out in the outline landscape and ecology ecological management plan as certified.”</p>	References to the “ <i>ecology</i> ” needs to be changed to “ <i>ecological</i> ” for reasons of precision in order to be consistent with the title of the submitted control document – the “ <i>outline Landscape and Ecological Management Plan</i> ” (oLEMP) [REP2-022] or any subsequent revisions made to the oLEMP during the remainder of the Examination.



Requirement 15 (Control of noise during operational stage)	"...(2) Prior to commencement of operation of Work 15B, a noise investigation protocol, substantially in accordance with the outline noise investigation protocol certified under this Order , must be submitted to and approved by the relevant planning authority. ..."	In the interests of precision and enforceability.
Requirement 16 (Skills and employment strategy)	(1) The onshore works and offshore works may must not be commenced until a skills and employment strategy ..."	In the interests of precision and enforceability.
Requirement 18 (Compensatory Works)	"(1) No part of the The compensatory works may must not be commenced under this Order until details of ..."	In the interests of precision and enforceability.
Requirement 19 (Reuse of temporary works with the onshore works for North Falls)	<p>("(1) In the event that any temporary works which have been constructed pursuant to any development consent order that may be made by the Secretary of State in relation to North Falls are proposed to be reused by the undertaker in connection with the authorised development, such reuse may must not be commenced until a scheme which accords with sub-paragraph (2) has been submitted to and approved by the relevant planning authority.</p> <p>(2) The scheme to be submitted for approval under sub-paragraph (1) must include details of the temporary works to be reused and a timetable for their reuse and restoration or reinstatement.</p>	In the interests of precision and enforceability and to ensure drafting consistency with other requirements in Schedule 2.



	(3) Any scheme approved under sub -paragraph (2) must be implemented as approved. ...”	
Requirement 20 (Biodiversity net gain)	(1) Work No. 15 may must not be commenced until a net gain strategy ...”	In the interests of precision and enforceability.
Requirement 21 (Offshore decommissioning)	“No The offshore works may must not be commenced until a written decommissioning programme ...”	In the interests of precision and enforceability.
Requirement 23 (Requirement for written approval)	“23. Where under any of the above requirements the approval or agreement of the Secretary of State, or the relevant planning authority or another person is required, that approval or agreement must be given in writing.”	“Another person” is undefined in the dDCO and appears to be unnecessary because all of the requirements included in Schedule 2 requiring approval of details would either be determined by the Secretary of State (including delegation to an “appointed person” in respect of the determination of appeals) or a relevant planning authority.
Requirement 24 (Amendments to approved details)	“24. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed by the Secretary of State, or the relevant planning authority or another person .”	Similar issue as raised for Requirement 23.



Part 2 of Schedule 2 Approval of matters specified in requirements		
Paragraph 2 (Applications made under requirements)	<p>“2. (1) Where an application has been made to the relevant planning authority ...</p> <p>(3) With the exception of Requirements 5, 10, 11, 12 and 18, in the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.</p> <p>(4) With respect to Requirements 5, 10, 11, 12 and 18, where an application has been made to the relevant planning authority for any agreement or approval required pursuant to those requirements and the relevant planning authority has not given notice to the undertaker of their decision within the period set out in sub-paragraph (1), within a period of 8 weeks or by the conclusion of such period as may be extended by agreement under sub-paragraph (1)(b), then the application shall be deemed to have been refused consent.</p>	<p>The nature of the matters covered by Requirements 5, 10, 11, 12 and 18 are such that the ExA considers it would be inappropriate for them to benefit from a ‘deemed approval’ under sub-paragraph (3) should applications relating to them not be determined within the time periods specified in sub-paragraph (1)(a) or (b). The ExA therefore considers that Requirements 5, 10, 11, 12 and 18 should be treated as exceptions to provisions of sub-paragraph (3) and be made the subject of a deemed refusal should applications for them not be determined within the time periods specified in sub-paragraph (3).</p> <p>The ExA considers that Requirement 5 would not necessarily have to be subject to the suggested exception under sub-paragraph (3) and new sub-paragraph (4) if, prior to the submission of an application or applications for the approval of the onshore substation’s detailed design, there had been a referral to an independent design review panel. In that regard see also ExQ3 question SLV.3.01.</p>



Paragraph 5 (Fees)	“(1) ... Regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(xxx) (as may be amended from time to time) ..”	(xxx) A SI footnote appears to be missing.
Schedule 9 Protective Provisions		
	<p>The Applicant and other Interested Parties with an interest in Protective Provisions should note that the ExA at this time is not suggesting any changes to the Protective Provisions included in the extant version of the dDCO [REP5-007]. That is because the ExA is aware that there are ongoing negotiations relating to the various sets of Protective Provisions.</p> <p>Interested Parties attention is, however, drawn to ExQ3 question DCO.3.09 which seeks updates with respect to the progress being made to agree Protective Provisions with the Applicant.</p>	
Schedule 10 Deemed Marine Licence – Generation Assets (DMLGA)		
	<p>The Applicant and other Interested Parties with an interest in the DMLGA should note that the ExA at this time is not suggesting any changes to the DMLGA included in the extant version of the dDCO [REP5-007]. That is because the ExA is aware that there continue to be ongoing discussions between the Applicant and various Interested Parties relating to the detailed drafting of the DMLGA.</p> <p>The Applicant and other Interested Parties’ attention is, however, drawn to the various DCO ExQ3 question concerning this DML which they should respond to. Where there is disagreement between the Applicant and other Interested Parties relating to the DMLGA’s detailed drafting the later should submit their preferred wording at Deadline 7 for the ExA’s consideration alongside the final version of the dDCO</p>	



	that the Applicant will be submitting at Deadline 7. Thereafter the ExA may make requests under Rule 17 for further information relating to the detailed drafting of the DMLGA which would be for response prior to the Examination's close.	
Schedule 11 Deemed Marine Licence – Transmission Assets (DMLTA)		
	<p>The Applicant and other Interested Parties with an interest in the DMLTA should note that the ExA at this time is not suggesting any changes to the DMLGA included in the extant version of the dDCO [REP5-007]. That is because the ExA is aware that there continue to be ongoing discussions between the Applicant and various Interested Parties relating to the detailed drafting of the DMLTA.</p> <p>The Applicant and other Interested Parties' attention is, however, drawn to the various DCO ExQ3 question concerning this DML which they should respond to. Where there is disagreement between the Applicant and other Interested Parties relating to the DMLTA's detailed drafting the later should submit their preferred wording at Deadline 7 for the ExA's consideration alongside the final version of the dDCO that the Applicant will be submitting at Deadline 7. Thereafter the ExA may make requests under Rule 17 for further information relating to the detailed drafting of the DMLTA which would be for response prior to the Examination's close.</p>	
Schedule 13 Compensation		
Header title	Article 3 Article 49	Revision suggested to identify the correct Article relating to compensation.



Schedule 15 Documents to be certified		
All documents listed	In the final version of the dDCO Schedule 15 must be updated to ensure it includes the most update version of each and every document to be certified under Article 44 by the Secretary of State.	To ensure the correct documentation is cited and can be certified.