

## FIVE ESTUARIES OFFSHORE WIND FARM

10.57 COMMENTS OF THE EXA'S PROPOSED SCHEDULE OF CHANGES TO THE DDCO

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A Mar 25 Deadline 7 Burges VEOWF VEOWF Salmon	Revision	Date	Status/Reason for Issue	Originator	Checked	Approved
	Α	Mar 25	Deadline 7	0	VEOWF	VEOWF



## **COMMENTS ON PROPOSED SCHEDULE OF CHANGES**

General	ExA's Proposed Changes	ExA's Reasoning	Applicant response
References to authorised development and project	Replace all references to "authorised project" with "authorised development"	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.	The Applicant has reviewed the dDCO and made these amendments in revision G submitted at Deadline 6 [REP6-007].
Preamble	ExA's Proposed Changes	ExA's Reasoning	Applicant response
Infrastructure Planning (Examination Procedure) Rules 2010( <b>b</b> ).	The first footnote ( <b>b</b> ) on page 6 should be a page 5 footnote.	Format error - Applicant to check all footnote entries.	The Applicant has reviewed the dDCO and this is correct in the SI version; this is an error from adding a cover to the working version. This is shown correctly in the SI version submitted with the final version of the dDCO at Deadline 7.



Articles	ExA's Proposed Changes	ExA's Reasoning	Applicant response
Article 2	"cable" means up to 400kilovolt 400 kilovolts cables"	Convention error. Other occurrences in Schedule 1 should also be corrected	The Applicant has reviewed the dDCO and made these amendments in revision G submitted at Deadline 6 [REP6-007].
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)	The Applicant has reviewed the dDCO and made these amendments in revision G submitted at Deadline 6 [REP6-007].



Schedule 1 Authorised Development	ExA's Proposed Changes	ExA's Reasoning	Applicant response
Part 1 Authorised Development	"Work No. 4A B — Construction of a temporary construction compound and laydown area (Beach Works TCC Temporary Construction 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."	There is no Work No. 4A showing on the most recent Revision C of Work Plans Onshore [REP-004]. 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.	The Applicant has amended the works plans [REP6-005] at Deadline 6 to resolve any inconsistency. The dDCO does not require to be amended.  The Applicant has reviewed the dDCO and amended the TCC reference in revision G submitted at Deadline 6 [REP6-007].
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	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.	The Applicant has amended the works plans [REP6-005] at Deadline 6 to resolve any inconsistency. The dDCO does not require to be amended.



	junctions and visibility splays.		
Part 1 Authorised Development	Work No. <del>18</del> — 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.	The Applicant has made these amendments in revision G of the dDCO submitted at Deadline 6 [REP6-007].
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 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."	Introduction of subheadings and other minor changes to aid precision.	The Applicant has made these amendments in revision G of the dDCO submitted at Deadline 6 [REP6-007].



	Any associated development in connection with Work Nos. 4 to 18 (new subheading)  "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—"		
Part 1 of Schedule 2 Requirements	ExA's Proposed Changes	ExA's Reasoning	Applicant response
Requirement 3 (Aviation safety)	" (2) the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph sub-paragraph and(3) The lights installed in accordance with paragraph sub-paragraph (1) will be operated"	References to "paragraph" rather than sub- paragraph are inconsistent with the terminology used in other requirements in Schedule 2.	The Applicant has reviewed the dDCO and made these amendments in revision G submitted at Deadline 6 [REP6-007].



## Requirement 5 (Onshore substation works etc)

"5-(1) Construction of Work No. 15B (the onshore electrical substation) must not commence until details of— ...

- d) **external** hard surfacing materials;
- e) the dimensions, **external** colour and materials used for the buildings;
- f) security fencing, **height**, colour and materials:
- (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.
- (3) In relation to Work No. 15B (the enshere electrical substation) ..."
- (4) Work No. 15B must be carried out in accordance with the details approved under subparagraph (2) (1).

- (1) Changes would aid precision.
- (2) Typographic error requiring correction.
- (3) Superfluous text, with Work No. 15B having been clarified in sub-paragraph (1).
- (4) Should be subparagraph (1) rather than (2) because the details to be accorded with would be approved under subparagraph (1) not (2).

Th reference to the "ecology" needs to be changed to "ecological" for reasons of precision in order to be consistent with the title of the submitted control document – the "outline Landscape and Ecological Management Plan" (oLEMP) [REP2-022] or any subsequent revisions made to the oLEMP during the remainder of the Examination.

The Applicant has reviewed the dDCO and made these amendments in revision G submitted at Deadline 6 [REP6-007].



	Work No. 15B must not be commenced until a written landscaping scheme and associated work programme in accordance with the outline 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).	The Applicant has made this amendment in revision G of the dDCO submitted at Deadline 6 [REP6-007].
Requirement 10 ("Landscape Ecology management plan")	"Landscape and Ecology ecological management plan  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.  (2) The landscape and ecology	References to the "ecology" needs to be changed to "ecological" for reasons of precision in order to be consistent with the title of the submitted control document – the "outline Landscape and Ecological Management Plan" (oLEMP) [REP2-022] or any subsequent revisions made to the oLEMP during the remainder of the Examination.	The Applicant has reviewed the dDCO and made these amendments in revision G submitted at Deadline 6 [REP6-007].



	ecological management plan(s) submitted under subparagraph (1) must include an implementation timetable and must be implemented as approved as applicable in each stage.  (3) Onshore site preparation works must only take place in accordance with the relevant details set out in the outline		
	landscape and <del>ecology</del> ecological management plan as certified."		
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.	The Applicant considers that the amendment sought is not appropriate and would object to its inclusion. The protocol submitted is not intended to be a certified outline document, but rather has been produced to demonstrate how the final protocol would work in order to provide information. The final protocol will be jointly produced by all of the undertakers who obtain DCO consent. Given that North Falls is currently in Examination and that National Grid have not yet made an application for development



			consent, the Applicant does not consider that the draft protocol can be reasonably be certified as it will still require to also be considered in 2 other DCO Examinations, with the final protocol developed following all of the Examinations and then submitted to the discharging authority. To certify this iteration would prevent changes arising from other Examinations being properly picked up and is likely to result in inconsistency across the three projects, contrary to the objectives of collaboration on this point.
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.	The Applicant has made this amendment in revision G of the dDCO submitted at Deadline 6 [REP6-007].
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.	The Applicant has made this amendment in revision G of the dDCO submitted at Deadline 6 [REP6-007].
Requirement 19 (Reuse of temporary works with the	("1) In the event that any temporary works which have been constructed pursuant to any development consent order that	In the interests of precision and enforceability and to ensure	The Applicant has made this amendment in revision G of the



onshore works for North Falls)	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.  (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.  (3) Any scheme approved under sub-paragraph (2) must be implemented as approved"	drafting consistency with other requirements in Schedule 2.	dDCO submitted at Deadline 6 [REP6-007].
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.	The Applicant has made this amendment in revision G of the dDCO submitted at Deadline 6 [REP6-007].
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.	The Applicant has made this amendment in revision G of the



			dDCO submitted at Deadline 6 [REP6-007].
Requirement 23 (Requirement for written approval)	"23. Where under any of the above requirements the approval or agreement of the Secretary of State, <b>or</b> the relevant planning authority <del>or another person</del> 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.	The Applicant has made this amendment in revision G of the dDCO submitted at Deadline 6 [REP6-007].
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.	The Applicant has made this amendment in revision G of the dDCO submitted at Deadline 6 [REP6-007].



Part 2 of Schedule 2 Approval of matters specified in requirements	ExA's Proposed Changes	ExA's Reasoning	Applicant response
Paragraph 2 (Applications made under requirements)	<ul> <li>"2. (1) Where an application has been made to the relevant planning authority</li> <li>(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 subparagraph (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.</li> <li>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</li> </ul>	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). The ExA considers that Requirement 5 would not necessarily have to be subject to the suggested exception under	The Applicant does not fully agree that the change sought is necessary or appropriate. The Applicant has partly made the change sought but only as regards requirement 5. The Applicant does not agree that it is appropriate that deemed refusal applies to requirements 10, 11, 12 and 18.  Requirement 10 (LE MP), requirement 11 (Soil Management Plan), requirement 12 (protected species) are all staged requirements for which multiple applications may be made for sperate stages. Delivery of a CNP NSIP should not be delayed by deemed refusal simply because the planning authority do not deal with these applications timeously given that the subject matter should not be contentious. The risk of delay on these requirements

delay on these requirements



of their decision within the period set out in subparagraph (1), within a period of 8 weeks or by the conclusion of such period as may be extended by agreement under subparagraph (1)(b), then the application shall be deemed to have been refused consent. 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.

would not be a one-off risk but a recuring one given the staged nature of the development and the need for more than one approval in relation to each requirement. The Applicant does not accept that the creation of this risk is necessary or appropriate having regard to the urgent need for this development set out in the NPS.

Requirement 18 only applies to the LBBG compensatory site and concerns the erection of a fence. This work must be carried out years in advance of the main works commencing. There is no reason that the relevant planning authority should not be able to determine an application for these very limited works within the time allowed, however unnecessary delay could lead to the Applicant not having the fence in place for the requisite number of breeding seasons per its programme and therefore delaying the commencement of the



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.	construction, and therefore operation, of the project. The Applicant does not agree that this risk should be permitted to arise for no reason other than that the LPA failed to deal with an application timeously. The risk of such an unnecessary delay is not in accordance with the NPS and is not justified by the subject matter of the requirement, which, it is again noted, is erection of a fence.  The Applicant has made this amendment in revision G of the dDCO submitted at Deadline 6 [REP6-007].
Schedule 9 Protective Provisions	ExA's Proposed Changes	ExA's Reasoning	Applicant response
	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.		A full submission on protective provisions including the Applicant's preferred drafting of those not agreed has been included in the Deadline 7 submission.



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. Schedule 10 **ExA's Proposed Changes** ExA's Reasoning **Applicant response Deemed Marine** Licence -**Generation Assets** (DMLGA) The Applicant and other Interested Parties with an interest in the The Applicant has responded to DMLGA should note that the ExA at this time is not suggesting any each point raised by IPs in changes to the DMLGA included in the extant version of the dDCO response to their submissions and has made changes to the IREP5-0071. That is because the ExA is aware that there continue to be ongoing discussions between the Applicant and various Interested dDCO where these are Parties relating to the detailed drafting of the DMLGA. accepted. The Applicant was The Applicant and other Interested Parties' attention is, however, drawn waiting on the MMO view on to the various DCO ExQ3 question concerning this DML which they the outstanding MCA should respond to. Where there is disagreement between the Applicant requested DML amends which and other Interested Parties relating to the DMLGA's detailed drafting have not been received. 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 DMLGA which would be for response prior to the Examination's close



Schedule 13 Compensation	ExA's Proposed Changes	ExA's Reasoning	Applicant response
Header title	Article 3 Article 49	Revision suggested to identify the correct Article relating to compensation.	The Applicant has added article 49 to the schedule header but does not agree that it replaces article 3 as article 3 grants the consent for the compensatory works.
Schedule 15 Documents to be certified	ExA's Proposed Changes	ExA's Reasoning	Applicant response
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.	This has been actioned in the dDCO submitted at Deadline 7.



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