

**Application by North Falls Offshore Wind Farm Ltd for an Order granting Development Consent for an offshore Wind Farm**

**Network Rail Written Representations and Responses to the Examining Authority's Written Question (EXQ1)**

**Project Reference: EN010119**

These representations will also include Network Rail Infrastructure Limited (Network Rail's) response to the Examining Authority's Written Questions (EXQ1) ahead of deadline 2 on 4<sup>th</sup> March 2025.

**1. Question Q6.1.46**

- 1.1 Question Q6.1.46 has been directed to both the Applicant and Network Rail. Network Rail will be responding to (i), (iii) and (iv) of the question below.
- 1.2 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. Network Rail operate the railway infrastructure pursuant to a network licence (the Network Licence) granted under section 8 of the Railways Act 1993. The Network Licence contains a set of conditions under which Network Rail must operate. Network Rail's duties under the Network Licence are enforceable by the Office of Rail Regulation (ORR).
- 1.3 Under the terms of the Network Licence, Network Rail is under a duty to secure the operation, maintenance, renewal and enhancement of the network in order to satisfy the reasonable requirements of customers and funders. If the ORR were to find Network Rail in breach of its Licence obligations, including this core duty, then enforcement action could be taken against Network Rail.
- 1.4 Network Rail objects to any compulsory acquisition of rights over, under and across operational railway land and its assets or extinguishment of the rights held by Network Rail over operation railway land or any of its assets. Network Rail also objects to the seeking of powers to carry out works in the vicinity of the operational railway without first securing appropriate protections for Network Rail's statutory undertaking.
- 1.5 Network Rail considers there is no compelling case in the public interest for the compulsory acquisition of rights over its land and the Applicant should negotiate matters by private agreement to secure the necessary powers.

**Protective Provisions and relevant agreements**

- 1.6 Network Rail has provided the Applicant with draft protective provisions which it considers appropriate. Network Rail's standard protective provisions have been widely incorporated in other Development Consent Order and provide the necessary protections for Network Rail's statutory undertaking. Network Rail's standard protective provisions ensure the Applicant does not exercise any rights under the DCO until the necessary agreements and consents are in place.

1.7 The current protective provisions do not adequately safeguard Network Rail's rights or operational land. A comparison of the provisions is appended to this response. Though the main differences are:

- The protective provisions in the dDCO are an older version (has the incorrect registered office for Network Rail).
- Omits paragraph 4(1) which requires Network Rail's consent prior to exercising the rights under the Order.
- Paragraph 4(4) is incomplete and does not refer to all the relevant articles (article 27 and 25).
- Obligation to seek NR consent when using or acquiring a new right or imposing a restrictive covenant is deleted.
- Deletion of the EMI provision.

The above amendments along with other changes have been made without an explanation. The deleted provisions are included in the Network Rail's standard protective provisions as they are imperative to safe operation of the railway.

1.8 If the DCO is granted, it would permit the Applicant to carry out the following works:

**Plot 4-010**

*Work No. 6—onshore connection works comprising—*

*Work No. 6A—*

*(a) up to two cable circuits and associated ducting between Work No. 4D and Work No. 12 including working areas and laydown areas and means of access; or  
(b) up to two cable circuits to be pulled through existing ducts between Work No. 4D and Work No. 12 including working areas and laydown areas and means of access;  
and*

*Work No. 6B—cable ducting for two additional cable circuits for later installation of additional electrical connections between Work No. 4D and Work No. 12 including working areas and laydown areas and means of access.*

**Plots 4-013, 4-014**

*Work No. 10—permanent means of access including creation and improvement of accesses and visibility splays and vegetation clearance.*

*The Applicant has advised that the plots required to provide a permanent right of access to the cables for operation and maintenance purposes following construction. For the avoidance of doubt, these accesses are not proposed to be used during the construction phase. In this instance the route within these plots use a preexisting access and there is no requirement to undertake any works.*

1.9 The ducts will be installed using a trenchless technique such as horizontal directional drilling (HDD) under the railway.

1.10 In respect of Plots 4-013 and 4-014, the Applicant propose to use a pre-existing access during the construction phase. Network Rail's records show this as an accommodation overbridge (TWN/1039) (mileage 66.27) provided to make good an interruption in a field and within

Network Rail's ownership. A Structures Assessment is likely to be required to assess the capacity of the bridge, prior to it being used for access to any worksites, as well as a property agreement permitting the Applicant the right to use this bridge.

1.11 In order to facilitate the works, Network Rail will require the following agreements to be in place:

- a) Network Rail's standard protective provisions for inclusion in the DCO, to ensure the relevant protections are in place and agreements are entered into;
- b) Property agreement(s): any easements, licences, and/or transfers for acquisition of freehold land and/or rights (subject to Network Rail's clearance process)

The form of agreements is currently being negotiated between the parties and will be required to regulate the grant of the required rights from Network Rail to the Applicant. It is proposed that either the agreed heads of terms or the completed agreement (depending on how the negotiations reach), will be appended to the framework agreement. The inclusion in the Framework Agreement of the requirement to enter into a property agreement more than adequately addresses the Applicant's concerns regarding securing the rights it requires to carry out the works.

- c) Asset protection agreements:

These will be in the form of a basic asset protection agreement, asset protection agreement, structures agreement or other engineering documents required for the benefit and protection of Network Rail's assets.

The proposed project includes the creation of new ducts under the railway via horizontal drilling and cabling to run through the ducts. Network Rail is firmly of the view that these proposed works are significantly close in location and of a disruptive nature to the operational railway. Asset protection agreements are always required by Network Rail in such circumstances and are well precedented to ensure the appropriate and necessary technical, engineering and safety requirements for working on, over or near Network Rail's operational railway. Due to the location of the Applicant's proposed works, Network Rail requires an asset protection agreement in order to carry out its statutory duty.

Network Rail's asset protection team deal will determine if all or one of the above agreements are required for the project.

- d) Framework agreement: which describes and attaches the documents referred to above including any clearance conditions.

Network Rail considers a Framework Agreement to be the most effective way of; agreeing the inclusion of Protective Provisions required by Network Rail, asset protection agreement, providing for the grant of rights through an option for an easement, providing Network Rail with the comfort of retaining its existing rights,

providing for the recovery of Network Rail costs and governing the relationship between the parties.

- 1.12 Network Rail is liaising closely with the Applicant to enter into private agreements to govern the carrying out of the proposed works.
- 1.13 Without those agreements and satisfactory protective provisions being in place Network Rail considers the proposed development, if carried out, would have a detrimental impact on the safe, efficient, and economic operation of the railway and in accordance with its Network Licence. Until such agreements are in place, Network Rail is unable to withdraw its objection to the DCO.

#### s127 and s138 Planning Act 2008

- 1.14 In relation to the acquisition of rights only, section 127 (5) and (6) of the Planning Act 2008 apply. As you are aware compulsory acquisition of rights over statutory undertaker's land can only be acquired if the Secretary of State is satisfied there will not be any serious detriment to the undertaker's carrying on of its undertaking. Network Rail strongly maintains that the works proposed to install six permanent ducts with four carrying a single-phase cable and the other two ducts carrying a single and two additional optic cables under the railway will impede Network Rail's ability to ensure the continued safe, efficient and economical operation of the operational railway, if the works are carried out with the necessary procedures in place. As such Network Rail requires robust Protective Provisions and protections in additional agreements as discussed above.
- 1.15 Similarly, under section 138 of the Planning Act, compulsory acquisition powers over Network Rail's rights or apparatus can only be granted where the Secretary of State is satisfied that the removal or relocation will not impair Network Rail from carrying out its statutory functions. The current protective provisions do not provide for sufficient safeguards to be put in place before such rights are extinguished.
- 1.16 Given the national significance of the railway network, Network Rail require their standard provisions to ensure compliance with its licence conditions. Without the relevant provisions, Network Rail does not consider that the draft DCO as currently drafted satisfies the requirements of sections 127 and 138 of the Planning Act 2008, and consequently, compulsorily powers should not be exercised without further safeguards being incorporated.

## **2. Written Representations**

- 2.1 As mentioned above, Network Rail and Applicant are in the process of negotiating the protective provisions and framework agreement.
- 2.2 The heads of terms for the property agreement (option for an easement to run the cables) are currently being negotiated with the Applicant. Network Rail hopes to have all the necessary agreements in place prior to the end of the Examination.
- 2.3 Network Rail has also undertaken a two-stage clearance process by which Network Rail's technical and asset protection engineers reviewed the proposal. Business clearance has been granted for this scheme, subject to conditions but technical clearance is yet to be granted.

### **3. Conclusions**

- 3.1 Network Rail does not object to the project in principle. However, Network Rail is under a statutory duty to protect the operational railway and associated railway infrastructure. Network Rail wishes to continue to seek an agreement on the protections and agreements in a form that is well preceded and acceptable to Network Rail before the close of the examination.
- 3.2 In the event, that insufficient progress is made regarding the protective provisions and private agreements, Network Rail would like to reserve its position to request to be heard in an appropriate hearing to explain the impact of the proposals on its railway undertaking.

**4 March 2025**