

The Examining Authority
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our ref: AN/2024/135560/06-L01
Your ref: EN010130
Date: 3 February 2025

Dear Members of the Examining Authority

Application by GT R4 Limited (trading as Outer Dowsing Offshore Wind) for an order granting development consent for the Outer Dowsing Offshore Wind Project (Generating station and transmission infrastructure)

Pursuant to Deadline 4, the Environment Agency notes that the Examining Authority (ExA) invites comments on any submissions received at Deadline 3. Accordingly, we provide comments on the following submissions, together with updates relating to other matters within the Environment Agency's remit.

REP3-038 Applicant's comments on D1 Written Representations

The Environment Agency requested additional information in respect of the Horizontal Directional Drilling (HDD) pit bunding at the landfall site [[RR-018](#), paragraph 13.3.9 and [REP1-048](#), paragraph 7.9]. This was due to the potential risk of the HDD creating a tidal flood pathway, which would need mitigating. We received the Applicant's mitigation proposal on 11 November 2024 and discussed this matter during a meeting with them held on 20 November 2024. The Applicant has proposed (and confirmed in REP3-038, page 70) to resolve this matter at the detailed design stage, and we are satisfied that this could form part of the pre-construction technical/approval of plans. This has been secured via an additional entry in the outline Code of Construction Practice (CoCP), which states that "*During HDD works undertaken at landfall the landfall drill site will be temporarily bunded to the 0.5% probability level specified by the EA, to minimise flood risk*". This is satisfactory, although we have advised the Applicant that this should be expanded to include the confidence level.

We would also highlight that there appears to be a discrepancy in the outline CoCP documents submitted at Deadline 3 in that the paragraph numbering of the 'tracked' and 'clean' versions do not align - in respect of this matter it is included in the final bullet point of paragraph 73 in the clean version [[REP3-020](#)] and paragraph 74 [[REP3-021](#)] in the tracked version. However, this does not show as a tracked change.

Hydraulic modelling of the Onshore Substation (OnSS)

Further to our written representations on this topic [[REP1-048](#), paragraph 8.1], we received an updated River Welland Breach Model (Version 4) on 5 November 2024. We reviewed this and we can confirm that it is fit for purpose in relation to assessing flood risk mitigation requirements for the OnSS.

For the avoidance of doubt, we are still awaiting additional modelling in relation to the potential 3rd party impacts during the 75-year lifetime scenario, which the Applicant confirmed was being undertaken [[REP2-051](#), Applicant's answer to the Examining Authority's question Q1 CC 1.5]. The Applicant anticipated this will be ready for submission at Deadline 4 and we will endeavour to provide comments on it as soon as possible following receipt.

Hydraulic modelling of the Noise Bund

You will be aware from our answer to the ExA's question Q1 NV 1.3 [[REP2-067](#)] that we had requested the Applicant respond to some queries we had raised in respect of the noise bund modelling. An updated model was received on 19 December 2024, and we have now completed a review of this. Unfortunately, not all our queries have been adequately resolved and we are continuing to discuss the outstanding issues with the Applicant.

Update regarding Protective Provisions

The Environment Agency has continued to have constructive discussions with the Applicant in respect of Protective Provisions and a side agreement to ensure the installation of the Export Cable Corridor does not adversely affect or delay the annual beach nourishment works that we undertake annually along the Lincolnshire Coast. As mentioned in our Deadline 3 Submission [[REP3-064](#)], the Protective Provisions need to work hand in glove with the side agreement and work on this is still ongoing.

However, we are pleased to attach our preferred draft of these in the appendix below. We are aware that the areas of disagreement are as follows:

1. The Applicant does not agree with the express inclusion of the 'beach nourishment works' within the Protective Provisions on the basis that these will be covered by the side agreement. It is our view that the side agreement will only act to secure a framework to work together in relation to the beach nourishment works. Given the complexity of the interface between the Environment Agency's beach nourishment works and the Applicant's cabling works, the detailed framework is set out in the side agreement, but the approval mechanism remains in the Protective Provisions.

In any event, beach nourishment works are likely to fall within the definition of 'sea defence' and it is well established under the Environment Agency's Standard Protective Provisions that all applicant works within 16m of the base of a sea defence require approval under the Protective Provisions. It is to ensure certainty and for clarity that the Environment Agency's beach nourishment works are expressly referred to.

2. The Applicant does not agree with the inclusion of 'programmes' and 'proposals' under the definition of 'Plan'. It is commonplace for the definition of plan in DCO protective provisions to include these terms – this term is now a standard inclusion in the Environment Agency's Protective Provisions.
3. The Applicant believes the indemnity should only apply to the specified works. It

is our view that matters beyond the specified works could still impact upon the Environment Agency and this should be covered.

It is also important to note that these may still be subject to further amendment if additional tie-ins are found to be required when the draft of the beach agreement is finalised. However, we envisage such amendments would be very minor.

The Protective Provisions will replace the Environmental Permitting Regulations 2016 and are linked to the agreement we may provide to the disapplication provision in Article 7(4) of the draft DCO. We intend that the disapplication of these Regulations will not preclude the use of an 'exempt flood risk activity' as described in Regulation 5 of the 2016 Regulations. We are, therefore, also considering if Article 7(4) requires further amendment to reflect this.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me at the number below.

Yours sincerely

Annette Hewitson
Principal Planning Adviser, MSc, MRTPI

[Redacted signature block]

APPENDIX

Environment Agency preferred draft of Protective Provisions

SCHEDULE 1 Article **Error! Reference source not found.**
Protective Provisions

PART 1

Protection for the Environment Agency

1.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

“Agency” means the Environment Agency;

“beach nourishment works” means work carried out annually by the Agency to nourish the existing coastline between Saltfleet and Gibraltar Point in Lincolnshire;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“emergency” means any occurrence which presents a risk of—

- (a) serious flooding
- (b) serious detrimental impact on drainage
- (c) serious harm to the environment

“exempt flood risk activities” has the same meaning given in regulation 5 of the Environmental Permitting (England and Wales) Regulations 2016;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“sea defence” means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency’s area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within—

- (a) 16 metres of the base of a sea defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence; or
 - (ii) interfere with the Agency’s access to or along that sea defence or the Agency’s ability to undertake works to ensure the efficacy of that sea defence;

- (b) 8 metres of the base of a remote defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or
 - (ii) interfere with the Agency’s access to or along that remote defence;
- (c) 16 metres of a drainage work or is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) affect the flow, purity or quality of water in any watercourse or other surface waters
 - (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or
 - (v) affect the conservation value of the main river and habitats in its immediate vicinity;
 or which involves—
 - (d) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
 - (e) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work,
 - (f) any interference with the ability of the Agency or its contractors to carry out the beach nourishment works
 but does not include exempt flood risk activities;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

Submission and approval of plans

2.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 12.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(a).

(5) In the case of a refusal, the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

3. Without limiting paragraph 2 the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Part of Schedule 18

5.—(1) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within such reasonable period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified in the notice served.

(2) The risks specified in sub-paragraph (1) are—

- (a) risk of flooding;
- (b) risk of harm to the environment;
- (c) risk of detrimental impact on drainage;
- (d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 12.

Maintenance of works

6.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 12.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

7. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

8.—(1) If by reason of construction of the specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide such suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such access must be made available as soon as reasonably practicable after the undertaker becoming aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

(2) If by reason of stopping up or diversion of Roman Bank under the powers conferred by article 12 (temporary stopping up of streets) the Agency's access to carry out any of its statutory functions would be materially obstructed, the undertaker must facilitate continued, unrestricted access over Roman Bank for the Agency and any contractors working on its behalf, provided that the Agency gives the undertaker reasonable notice of its need to take access over any part of Roman Bank which is temporarily stopped up.

Free passage of fish

9.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within such reasonable period specified in the notice.

(3) If the undertaker fails to take such steps as are described in the notice served under subparagraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

10. (1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

11.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.
- (2) For the avoidance of doubt, in sub-paragraph (1)—
- (a) “costs” includes—
 - (i) expenses and charges;
 - (ii) staff costs and overheads;
 - (iii) legal costs;
 - (b) “losses” includes physical damage.
 - (c) “claims” and “demands” include as applicable—
 - (i) costs (within the meaning of sub-paragraph (2(i))) incurred in connection with any claim or demand;
 - (ii) any interest element of sums claimed or demanded;
 - (d) “liabilities” includes—
 - (i) contractual liabilities;
 - (ii) tortious liabilities (including liabilities for negligence or nuisance);
 - (iii) liabilities to pay statutory compensation or for breach of statutory duty;
 - (iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).
- (3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.
- (4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.
- (5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.
- (6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

12. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 38 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.