

Kate Tibble
Gallop Wind Farm Limited

By email

1 September 2011

Dear Kate,

**EN010003: Proposed Gallop Offshore Wind Farm
Draft Development Consent Order, Explanatory Memorandum and related
documents**

I am writing with reference to your letter dated 8 August 2011 and the draft Development Consent Order (DCO), Explanatory Memorandum and related documents enclosed therein in respect of the proposed Gallop Wind Farm project. Thank you for providing these documents at this stage.

The draft DCO is one of the central documents submitted with any application for an Order granting development consent and experience to date has highlighted the importance of refining the draft Order as far as possible before submission of an application to the Infrastructure Planning Commission (IPC).

We have now considered the documents provided and set out our observations below. I hope that the comments will assist you in finalising the DCO and preparing the application for submission. Our comments are entirely without prejudice to any future decisions of the IPC, including that of the Commissioner appointed to consider the acceptance of any future application made under section 55 of the Planning Act 2008 ('the 2008 Act'). Further to your covering letter, we have not commented on the compulsory acquisition provisions within the draft DCO at this stage.

1. Description of development and flexibility

We have reviewed the draft DCO and Explanatory Memorandum. As a general point, the latter document should at all times clearly explain the purpose and effect of provisions in the draft DCO, including any divergences from the Model Provisions (set out in The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) and the reasons for proposing to make these changes.

a. The authorised project

We note that the DCO as drafted contains two Nationally Significant Infrastructure Projects (NSIPs) together with a number of works articulated as associated development. We can confirm that we are able to consider more than one NSIP within a single application for

development consent, for example where those NSIPs are clearly linked, as advised in paragraph 12 of the CLG Guidance on Associated Development.

It is for the developer to clearly specify within the draft DCO those elements which they regard as being integral to an NSIP, any associated development and any ancillary works, and to explain the approach taken in their Explanatory Memorandum. As suggested in your covering letter, it may be possible to make appropriate amendments to the drafting of the Order during the examination should it become apparent that an exclusion under section 16(3)(b) of the 2008 Act is applicable to the proposed electric lines. This would be at the discretion of the Examining Authority.

b. Flexibility: offshore aspects

Schedule 1, Part 1 of the draft DCO defines the authorised project and associated development. We see that the draft DCO seeks to retain considerable flexibility within the proposed consent. You should be satisfied that this approach is consistent with (*inter alia*) paragraph 2.6.43 of NPS EN-3. For the proposed offshore development, the DCO will need to clearly articulate the parameters of what is proposed and ensure that the Environmental Statement (ES) has assessed the likely worst case scenario.

We note the case for flexibility made in your draft 'Rochdale Appendix' and it is useful to see the information presented at section 4.2 ('offshore parameters'), such as that relating to the dimensions of different foundation types. However, taking the example of foundation types, the DCO as currently drafted could result in a potentially unlimited number and mix of foundation types being built. NPS EN-3 recognises the need for flexibility in project details, but paragraphs 2.6.42 and 2.6.43 for example do not suggest there should be doubt about the number of turbines included in the DCO application.

In addition, you should be mindful that Regulation 6(1)(b) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) states that an application for the construction of an offshore generating station must, amongst other matters, be accompanied by "*details of the proposed route and method of installation for any cable*". In this regard, you should ensure that the required information relating to the proposed sub sea export cable (Work No.3A) will be available at the time of submission of the development consent application to the IPC.

We would reiterate advice we have previously given, both in meetings and within IPC Advice Note Nine (Rochdale Envelope), that developers should make every effort to finalise as much of the project as possible prior to submission of their DCO application. Where flexibility is required within a draft DCO, the maximum adverse scenario (the 'worst case') should be assessed including in terms of the inter-relationship of impacts. With this in mind, the Environmental Impact Assessment (EIA) should assess the worst case in terms of environmental impacts. You should note that in defining the 'worst case' for the proposed development, care will need to be taken in preparing and demonstrating the worst case.

If you choose to progress on the basis of the wide parameters currently proposed within the draft DCO, you should ensure that you are properly advised of the risks of such an approach. You will need to be able to demonstrate that, taken as a whole, the application is sufficiently clear as to what is being applied for so as to be intelligible to the

Commissioner needing to make the decision about application acceptance, and be satisfied that it constitutes a robust and defensible submission.

We note that you have chosen to prepare and send us a document entitled the 'Rochdale Appendix' which is intended to act as a 'bridge' document between the draft DCO and your ES. Whilst we think that some of the information and explanatory text included in this document may be useful, it seems to us that this could all (and more appropriately) be included in either the ES and/or the Explanatory Memorandum. Indeed, any text seeking to explain the reasons for the particular development parameters articulated within the draft DCO should properly be included in the Explanatory Memorandum. We would also advise that both the DCO (as explained in the Explanatory Memorandum) and the ES must be 'stand alone' and self-explanatory documents for the purposes of application acceptance, examination and post-decision stages.

Your Consultation Report, which must be submitted as part of your application, will also be a key document in this regard. You must be able to demonstrate that you have complied with your duties under sections 42, 47, 48 and 49 of the 2008 Act. This will include demonstrating how you have had regard to the views of the relevant prescribed consultees under section 42 of the 2008 Act on the issue of likely worst case scenario. The Consultation Report should also explain how the proposed project has been presented to consultees under section 47 of the 2008 Act, and demonstrate how you have ensured that consultees could understand the DCO proposals on the basis of the range of possible development scenarios.

c. Flexibility: onshore aspects

We will need to see the relevant plans before we can make meaningful observations about the appropriateness of some of the provisions within Schedule 1. We note however the intention to require some flexibility within the DCO for some of the onshore elements of the proposed development. As noted above, you should ensure that this approach is consistent with (*inter alia*) paragraph 2.6.43 of the NPS EN-3. For the proposed onshore development, the DCO will need to clearly articulate the parameters of what is proposed and ensure that the ES has assessed the likely worst case scenario.

d. Proposed accommodation platform and other offshore platforms

Schedule 1, Part 1 describes Work No.1 (b) of the proposed authorised development as '*up to one accommodation platform...*' We note that 'accommodation platform' is defined in Article 2 of the Order. The Explanatory Memorandum will need to be expanded to explain the purpose and effect of this element of the proposed development.

Work No.1 (c) is described as '*up to one collection platform*'. We note that both the proposed accommodation platform and proposed collection platform are described as being integral elements of the project whereas Work No.2 ('*up to three offshore substation platforms*') is described as being associated development. The reason for this distinction is not clear to us.

We note that some explanation is given for the approach taken in relation to Work No.2 in paragraph 29 of the Explanatory Memorandum. However, the Explanatory Memorandum should explain clearly why each of the different elements referred to above have been

identified as being integral to the authorised development or as associated development, with reference to the CLG Guidance on Associated Development where appropriate.

The Explanatory Memorandum will also need to justify why the proposed flexibility of ‘*up to one*’ platform is required in this context, and why it will not be possible at the point of application to specify whether or not an accommodation platform and/or a collection platform will be included within the application. The Explanatory Memorandum will also need to explain whether the accommodation platform is intended to serve only the Galloper project or also the wider Greater Gabbard project and how this will be enforced through any consent.

2. Plans

a. Provision of plans

No plans have yet been provided to the IPC for either the onshore or offshore aspects of the proposed development. It is difficult for us to comment on parts of the draft DCO without the corresponding plans. Specifically, we are unable to make meaningful observations about the contents of much of Schedule 1 until plans are made available to us. We would wish to see (as a minimum) draft copies of the land and works plans prior to the application being submitted.

b. The works plan

We note the statement in your covering letter that it is not your intention to submit a works plan in relation to the offshore works. It is also unclear whether you intend to submit a land and/or works plan for the onshore GWF substation compound. You should be mindful that Regulation 5(2)(j) of the APFP Regulations states that an application for an order granting development consent must, amongst other matters, be accompanied by “*a works plan showing, in relation to existing features...the proposed location or (for a linear scheme) the proposed route and alignment of the development and works*”. This is a statutory requirement.

You should be satisfied that the required information will be made available as part of the development consent application to the IPC or if it is not, that you are advised of the risks of progressing with this approach. Given the requirements of section 55(3)(b), and by reference s.37(3)(d) and Regulation 5(2)(j) of the APFP Regulations, failure to provide this information at submission stage could put the Commissioner in difficulty in deciding whether to accept the application for examination.

3. Further approvals

Your covering letter and Explanatory Memorandum describe some elements of the DCO as being “*outline in nature*”. Much of the proposed development will be the subject of further approvals, be it by the local planning authority (onshore) or the Marine Management Organisation (MMO) (offshore). The application system put in place by the 2008 Act is different from predecessor regimes in that it requires a ‘full’ application to be submitted for examination. It is in the spirit of the 2008 Act to streamline the number of consents required for a proposed project and as such to minimise the need for further approvals wherever possible. The acceptability of your approach will be at the discretion of the appointed Commissioner(s).

If you seek to progress the application on this basis, you should ensure your approach is robust and defensible. The relevant consenting / licensing bodies will have been key stakeholders in the pre-application process and, if the application is accepted, we would expect this to continue throughout any pre-examination and examination stages. The heavy reliance on the proposed deemed Marine Licence in particular will mean a key role for the MMO in this regard.

The Explanatory Memorandum describes how, under the proposed approach, the deemed Marine Licence will be a significant further regulatory mechanism for approval of the detailed design aspects of the offshore development. The ES will be of critical importance if the deemed Marine Licence is to be relied upon for this purpose. The deemed Marine Licence may be drafted as a stand alone document but it will need to be entirely consistent with the provisions and requirements within the draft DCO. For example, the draft Explanatory Memorandum indicates that a written scheme setting out all stages of the authorised development seaward of mean low water will be required as part of the deemed Marine Licence but this does not appear to be quite what the referenced Marine Licence condition requires.

We note the contents of the draft outline Code of Construction Practice. Given its focus on the mitigation of construction impacts, it will need to clearly demonstrate how this relates to the assessment in the ES. We would also note that, as stated above, the ES must be a comprehensive and 'stand-alone' document setting out the likely significant impacts on the environment.

The schedule of other consents required for the construction and operation of the proposed project (which must be specified in the application form) will be important with a view to providing clarity on the matter of 'further approvals'.

4. Development Consent Order: detailed drafting points

Having reviewed the draft DCO, we would make the following points about the drafting of the document which we hope will be of assistance to you in preparing your application.

Interpretation

- Article 2(1) (interpretation), "maintain": We note the explanation in the Explanatory Memorandum that the definition of "maintain" is based on Schedule 2 of the Model Provisions, which sets out model provisions for railways. It is the IPC's view that the inclusion of "alter" and "improve" within this proposed definition is insufficiently clear and would make this definition unacceptably wide when applied to an offshore generating station of the proposed scale. If you choose to progress with this approach, the Explanatory Memorandum will need to go further in justifying the reasons for this.
- Article 2(6) (interpretation): states "*the expression "includes" shall be construed without limitation*". This is a departure from the Model Provisions and the Explanatory Memorandum will need to explain and set out the justification for this.

Other articles

- Article 3(2) (Development consent etc. granted by the Order): See our comments in section 2(b) above regarding the provision of plans for development seaward of mean low water.
- Article 4(1)(b) (Construction and maintenance of authorised project): The text is currently contained in square brackets and it is unclear whether this will be included within the final DCO. Any limits of deviation will need to be shown on the works plan (and where appropriate on any plans submitted under Regulation 5(2)(o) of the APFP Regulations if submission of these is considered necessary), explained within the Explanatory Memorandum and within the ES.
- Article 4(2) (Construction and maintenance of authorised project): The Explanatory Memorandum should go further in explaining not only the provenance of the additional wording taken from other Transport and Works Orders, but also the reasoning for its inclusion within this DCO and its effect. This should wherever appropriate make reference to the conclusions of the EIA. It seems to us that the approach taken in the Model Provisions, whereby maintenance is dealt with separately (in model provision 3) from the description of the authorised development (in Schedule A, Part 1) more clearly sets out these respective provisions.
- Article 7 (Benefit of the Order): The Explanatory Memorandum should explain why this varies from the Model Provisions and the effect of the proposed provisions.

Schedules

- Schedule 1, Part 1 (authorised development): see our general comments in section 1b above regarding the definition of the proposed project. The justification within the Explanatory Memorandum for including elements of the project as integral to the authorised project, or associated to it, is welcomed and will be an important part of the final submission. Please though see our comments in this regard in relation to proposed offshore platforms above. We will be happy to provide further comments on Schedule 1 once plans are made available to us.
- Schedule 1, Part 2 (ancillary works): the DCO and Explanatory Memorandum will need to explain the proposed approach to any ancillary works/matters.
- Schedule 1, Part 3, para.20 (requirements): this requirement should include wording to the effect that the connection and transmission works should fall within the scope of the works assessed by the EIA as set out in the Environmental Statement.
- Schedule 6: We note the use of the term 'requirements' in the draft deemed Marine Licence, but would note sections 71 and 85 of the Marine and Coastal Access Act 2009 where these are described as 'conditions'.

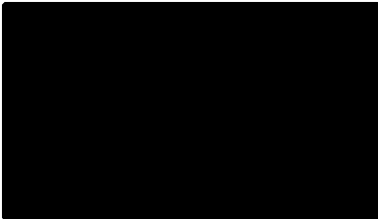
5. Other matters: Habitats Regulations Assessment Report

In June, the IPC provided some preliminary comments in respect of the draft Habitats Regulations Assessment (HRA) screening report for Galloper Wind Farm. I would like to take the opportunity to remind you that we encourage developers to submit draft HRA reports, including any supporting documents, prior to submitting an application to the IPC with a view to identifying any relevant procedural and other issues. Whilst we do not undertake formal detailed review of draft HRA reports at the pre-application stage, we may be able to provide advice under section 51 of the 2008 Act about meeting the procedural requirements under Regulation 5(2)(g) of the APFP Regulations 2009. This would be in

line with our approach on other projects and the IPC's Advice Note Ten (Habitats Regulations Assessment).

I trust that the above and our meeting on 2 September will prove to be of assistance. However, if you require any further advice or clarification, please do not hesitate to contact me.

Yours sincerely,



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