

East Anglia THREE  
Offshore Windfarm

East Anglia THREE

# Applicant's Comments on the ExA's dDCO

Document Reference – Deadline 7/Comments  
on the ExA dDCO / Applicant

Author – Royal HaskoningDHV  
East Anglia THREE Limited  
Date – December 2016  
Revision History – Revision A

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# 1 Introduction

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1. This document contains the Applicant's comments on the ExA's draft Development Consent Order. It adopts a tabular format of the ExA's comments or drafting followed by the Applicant's response.

## 2 Articles

ID	Comment and Applicants response
<p>ExA Comment</p>	<p><b>The definition of 'commence' and the need for pre-commencement works</b></p> <p>The ExA has raised concerns with the Applicant through the examination process that pre-commencement works, specifically those relating to archaeological assessment and protection, but also extending to hedgerow, boundary, fencing and some demolition and clearance works, should not be authorised to proceed prior to or with the effect of being premature in relation to the submission of relevant plans provided for in Requirements. The form of words in this draft has been proposed by the Applicant as a means of addressing these concerns. The ExA seeks views on whether it has done so as clearly and effectively as might otherwise be achievable.</p> <p>The ExA seeks observations from the Applicant and Local Planning Authorities (LPAs) on whether a notification requirement is sufficient to address these concerns and if it is appropriate to limit it to certain works, as the Applicant has done here. Might another and simpler means of achieving the same objective be to define 'pre-commencement works', list these and to provide (in appropriate requirements) that these must be undertaken in accordance with the relevant outline plans that would be certified documents? If additional content in outline plans is required to support this approach, this could be submitted at Deadline 7 and commented on at Deadline 8.</p> <p>The notification requirement as currently proposed permits the relevant local planning authority (the LPA) to consider whether individual works proposed constitute commencement and to make a decision on this. The Applicant intends that the notification procedure will give the LPA the opportunity to consider if it requires any plans to be prepared before the works take place. If the LPA determines that the works constitute commencement, then the Applicant would be in breach of the relevant requirement if they undertook these works before the plans had been approved. Subject to the reservations expressed above, this approach appears to be practical, but comments are sought on its operability.</p> <p>Comments are requested to pay specific attention to the following issues:</p> <ul style="list-style-type: none"> <li>- Five days is a short amount of time for the LPA to consider a notification. Is this practical?</li> </ul>

ID	Comment and Applicants response
	<p>- Drafting which includes operational procedure within a definition is not widely used. Ideally, operational procedure around notification should be included as amendments to the Requirements to which it relates and not be set out here.</p>
<p>Applicant's response</p>	<p>The Applicant considers that the notification process proposed strikes a proportionate balance. It enables the Applicant to undertake certain works without triggering commencement, whilst ensuring the LPAs obtain oversight of the pre-commencement works being undertaken and an ability to require that relevant plans are first put in place if required. For some minor works, it may not be necessary or proportionate to require full compliance with outline plans, and it is considered that the approach proposed allows flexibility to respond to the particular circumstances and works proposed to be undertaken.</p> <p>The Applicant and the LPA have discussed the timescales set out in the notification requirement and have agreed that 5 working days (i.e. 1 week) is sufficient time to enable the LPA to make an initial assessment of, and respond to, the notification. In practice, the Applicant and the LPAs will engage in regular dialogue well in advance of pre-commencement works through a series of scheduled meetings (as has been the case for the East Anglia ONE project). In any event, to the extent that the LPAs are not able to fully consider the request within 5 working days the process allows the LPA to submit a holding response and, in doing so, to extend the period for their full response to 15 working days (i.e. 3 weeks).</p> <p>In order to address the ExA's comments on drafting style and the removal of the operational requirements from the definition, the Applicant and LPAs have agreed to include a new Requirement 37. The revised wording proposed is as follows (with new wording highlighted in red):</p> <p><i>“commence” means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and, (b) in respect of any other works comprised in the authorised project has the meaning given in Requirement 37 and the words “commencement” and “commenced” are construed accordingly;</i></p> <p><b>Requirement 37 – Notification of site clearance and archaeological works</b></p> <p><i>37(1) For the purposes of any works landward of MHWS "commence" means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements, save that site clearance works landward of MHWS and archaeological works within Work Number 67 must first have been notified to the relevant</i></p>

ID	Comment and Applicants response
	<p><i>planning authority for confirmation that the works do not constitute commencement and either:</i>  <i>(a) the relevant planning authority has confirmed that the works do not constitute commencement;</i>  <i>(b) no response has been received by the undertaker within 5 working days of notification (the “initial period”); or</i>  <i>(c) within the initial period the relevant planning authority requests in writing an additional period of 10 working days to make such a determination and no response is received by the undertaker within that additional period of 10 working days</i>  <i>in which case the works shall be construed not to constitute commencement, and the words “commencement” and “commenced” are construed accordingly;</i></p> <p>Copies of emails confirming that the LPAs agree to the wording set out above are enclosed at Part 1 of the Schedule to this document. The agreed wording will be submitted as part of the Applicant’s draft DCO submitted for Deadline 8 on 15 December.</p>
ExA Comment	<p><b>The definition of ‘maintain’</b>                      The Applicant has amended this definition to reflect the approach taken in the made East Anglia ONE Order and (addressing issues raised in the examination process) has limited removal, reconstruction and replacement to ancillary works. The ExA has further removed the term ‘maintain’ from the definition to accord with the most recent drafting practice in made Orders. Comments are sought from the Applicant, LPAs and the Marine Management Organisation (MMO) on the changes that have been made.</p>
Applicant’s response	<p>As noted in the DCO Issue Specific Hearing in October the Applicant’s changes have been made to ensure consistency of approach for LPAs over the consented East Anglia ONE Offshore Wind Farm and proposed East Anglia THREE Offshore Wind Farm.</p> <p>The Applicant considers that the use of the word 'maintain' within the definition of "maintain" serves a specific purpose in line with its plain English meaning, but also understands the ExA's concern with regards to circular drafting. It is therefore proposed to substitute this with the word 'upkeep', being 'the process of keeping something, such as a building [or in this case apparatus], in good condition'. The definition of "maintain" which is proposed to be included within the draft Order is therefore as follows:</p> <p>"maintain" includes inspect, <b>upkeep</b>, repair, adjust, and alter and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part of Schedule 1 (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and "maintenance" is construed accordingly"</p>

ID	Comment and Applicants response
ExA Comment	<p><b>Arbitration</b></p> <p>The ExA seeks views from the Applicant, Eni UK Ltd and the MMO on the utilisation and scope of arbitration provided for under Art 33.</p> <p>Arbitration may be used as a means to resolve any dispute about the interface between the application proposal and oil and gas licences benefiting Eni UK Ltd. If arbitration was to be used in such specialist circumstances, there is an argument that a Panel of arbitration might be appointed, containing oil and gas and offshore wind generation expertise. Further detail of this proposal is set out in Annex A to this document.</p>
Applicant's response	<p>Please see the Applicant's response contained in the Applicant's Response to Consultation Questions (document reference: Deadline 7 / Applicant's Response to Consultation Questions).</p>
ExA Comment	<p><b>Crown rights and consent</b></p> <p>The ExA seeks views from the Applicant, the MMO and the Crown Estate (TCE) on the drafting of Art 37. The word 'take' in (1)(a) appears to be superfluous as long as drafting as proposed in the addition to paragraph (2) above is included.</p> <p>The drafting in general terms should reflect the requirement in s.135(1) PA 2008 that a DCO can only include provision of an interest held otherwise than or on behalf of the Crown if the appropriate Crown authority has given unconditional consent.</p>
Applicant's response	<p>The Applicant has made significant efforts to reach a conclusion on negotiations with The Crown Estate in relation to the precise wording for Article 37. The parties are working towards reaching agreement on the drafting of Article 37 by Deadline 8. Subject to agreement with the Crown Estate, the Applicant considers that it is appropriate to adopt the wording of the Crown Rights article used in the Hornsea 2 DCO, with the ExA's additional amendments proposed to paragraph (2) and (3). However, the Applicant considers that the word 'take' should remain in Article 37(1). The ExA questioned if this was superfluous, but the Applicant's view is that it should remain in order to maintain the restriction on 'taking' land or rights belonging to the Crown. It also follows that the paragraph 2 qualification will then permit 'taking' of any interest in land not currently being held by or on behalf of the Crown. Therefore, , and subject to reaching agreement with the Crown Estate, the Applicant proposes to include the following Crown Rights article within the draft DCO to be submitted at Deadline 8 on 15 December:</p> <p><b>Crown Rights</b></p> <p><i>37.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to <b>take</b>, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or</i></p>

ID	Comment and Applicants response
	<p><i>estuary)—</i></p> <p><i>(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;</i></p> <p><i>(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or</i></p> <p><i>(c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.</i></p> <p><i>(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.</i></p> <p><i>(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically."</i></p>
ExA Comment	<p><b>Protective provisions</b></p> <p>In addition to the provisions set out in Schedule 8, the ExA has proposed balanced protective provisions as an option to address the interface between the application proposal and oil and gas licences benefiting Eni UK Ltd. As such provisions did not form part of the Applicant’s Version 4 of the DCO they are included as Annex A to this document. Views are sought from the Applicant, Eni UK Ltd and the MMO, taking the detail provided in Annex A into account.</p>
Applicant’s response	<p>Please see the Applicant’s response contained in the Applicant’s Response to Consultation Questions (document reference: Deadline 7 / Applicant’s Response to Consultation Questions).</p>
ExA Comment	<p><b>Additional provisions: Art 39</b></p> <p>As an alternative means to address the interface between the application proposal and oil and gas licences benefiting Eni UK Ltd, the ExA has also considered the option of enabling the preparation of a ‘proximity plan’, to be approved by the MMO, under a headline power in a new Article 39 and a new Schedule included as Annex A to this document. Views are sought from the Applicant, Eni UK Ltd and the MMO, taking the detail provided in Annex A into account.</p>
Applicant’s response	<p>Please see the Applicant’s response contained in the Applicant’s Response to Consultation Questions (document reference: Deadline 7 / Applicant’s Response to Consultation Questions).</p>



### 3 Requirements

ID	Comment and Applicants response
ExA Comment	<p><b>Detailed offshore design parameters: 70% of turbines...</b></p> <p>Whilst this issue has previously been raised by the ExA during the examination process, views are sought from the Applicant the MMO and Natural England (NE) on whether this drafting is sufficiently clear, certain and enforceable, having regard to the potential for build-out under the generation assets Deemed Marine Licences conditions 1(2) where it is not specified how much of the 70% must be in each licence. Would it be clearer if a number of turbines was specified?</p>
Applicant's response	<p>The Applicant has considered the ExA's comments on the proposed requirement and has discussed this further with the MMO, Natural England and the RSPB. In order to address any concerns in relation to clarity, precision and enforceability it has been agreed with these parties that the requirement will be amended as set out below:</p> <p><i>"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised project must not exceed 52 turbines"</i></p> <p>Copies of emails confirming that the MMO, Natural England and the RSBP agree to the wording set out above are enclosed at Part 2 of the Schedule attached to this document. The agreed wording will be submitted as part of the Applicant's draft DCO submitted for Deadline 8 on 15 December.</p>
ExA Comment	<p><b>Detailed design parameters onshore: commencement and kiosk details</b></p> <p>The form of words 'each stage of the connection works must not commence until...' is used here, whereas in equivalent drafting in other Requirements, the form of words 'no stage of the connection works may commence until...' is used. The second form of words appears clearer and less vulnerable to misunderstanding or dispute. Should it be used here as well? The views of the Applicant and the LPAs are sought.</p>
Applicant's response	<p>The Applicant has no objection to using the form of words 'no stage of the connection works may commence until...' In the draft DCO. The Applicant proposes to update Requirement 12(8)(a) of the next version of the draft DCO to read as follows:</p> <p><i>"(8) In relation to the kiosks to be located within the onshore cable corridor-</i></p> <p><i>(a) no stage of the connection works may commence until for that stage details of the scale and appearance of the kiosks have</i></p>

ID	Comment and Applicants response
	<i>been submitted to and approved in writing by the relevant planning authority;"</i>
ExA Comment	<p><b>Included documents</b> Should a Project Environmental Management Plan (PEMP) (as referred to in the Outline Code of Construction Practice (OCoCP)) be secured by inclusion in the list of plans in this provision [Requirement 22] ? Views are sought from the Applicant, the MMO and LPAs.</p>
Applicant's response	<p>The Applicant proposes to add a part (k) to Requirement 22 to refer to the Project Environmental Management Plan as follows:</p> <p><i>"22.-(1) No stage of the connection works may commence until for that stage a code of construction practice (which must accord with the outline code of construction practice) has been submitted to and approved by the relevant local planning authority, in consultation with the relevant highway authority.</i></p> <p><i>(2) The code of construction practice must include-</i></p> <ul style="list-style-type: none"> <li><i>(a) a surface water and drainage management plan;</i></li> <li><i>(b) watercourse crossing method statements;</i></li> <li><i>(c) a flood plan;</i></li> <li><i>(d) a written scheme for noise and vibration management during construction;</i></li> <li><i>(e) an air quality monitoring plan;</i></li> <li><i>(f) artificial light emissions plan;</i></li> <li><i>(g) a site waste management plan;</i></li> <li><i>(h) a pollution prevention and emergency incident response plan;</i></li> <li><i>(i) a project community and public relations procedure;</i></li> <li><i>(j) a public rights of way management plan; and</i></li> <li><i>(k) a project environmental management plan.</i></li> </ul> <p>This will be included as part of the Applicant's draft DCO submitted for Deadline 8 on 15 December.</p>
ExA Comment	<p><b>Possible missing requirement: Skills strategy</b> Since the discussion of this issue in the examination process, there is now a formal written representation from Ipswich Borough Council which seeks extension of the East Anglia ONE skills</p>

ID	Comment and Applicants response
	<p>strategy. The Applicant and LPAs are asked to comment on this request and indicate whether or how and in what terms security for an extended skills strategy might be provided.</p>
Applicant's response	<p>It remains the Applicant's position that given the nature of the East Anglia THREE project a specific Requirement in relation to skills is not necessary or reasonable. The Applicant understands that Suffolk County Council (SCC) has been in discussion with Ipswich Borough Council (IBC) to explain the approach agreed between SCC and the Applicant for skills delivery in relation to the East Anglia ONE and THREE projects. That approach is set out in the SPR and SCC position statement on skills (EN010056-001877), specifically at paragraph 9. The Applicant further understands that, following discussions with SCC, IBC is content with the approach agreed between the Applicant and SCC.</p>

## 4 Protective Provisions

ID	Comment and Applicants response
ExA Comment	<p><b>Numbering of provisions</b> The Applicant is requested to review the numbering of the provisions in Schedule 8. Is numbering intended to be sequential throughout the Schedule, or is each Part intended to be individually numbered?</p>
Applicant's response	<p>Sequential numbering is intentional, and follows The Planning Inspectorate's Advice Note Fifteen: Drafting Development Consent Orders paragraph 3.2 which states (our emphasis):</p> <p><i>"3.2 Applicants should check that protective provisions drafted by others fit in with the terminology and style of the rest of the DCO and are suitably drafted for use in an SI. <u>If protective provisions for different persons are included in different parts of a single schedule, SI drafting requires the numbering of the paragraphs to follow sequentially throughout the schedule and not re-start at "1" with each part (as with all textual schedules in several parts).</u> It would be desirable for this approach to be adopted in the draft DCO submitted with the application and in each amended draft during the examination where protective provisions are changed."</i></p>

ID	Comment and Applicants response
	The Applicant will review the numbering prior to submission of the draft DCO at Deadline 8 on 15 December, and will amend the numbering in Schedule 8 as necessary to ensure that it is sequential throughout all parts of the Schedule and follows the PINS guidance as set out above.
ExA Comment	<p><b>Protective provisions: for the protection of Eni UK Ltd.</b></p> <p>Comments are sought from the Applicant and Eni UK Ltd. on an option under which balanced protective provisions would be included, as set out in Annex A to this document. The approach is set out in a separate Annex on the basis that protective provisions did not form part of the Version 4 DCO submitted by the Applicant.</p>
Applicant's response	Please see the Applicant's response contained in the Applicant's Response to Consultation Questions (document reference: Deadline 7 / Applicant's Response to Consultation Questions).

## 5 Deemed Marine Licences

ID	Comment and Applicants response
ExA Comment	<p><b>Detailed offshore design parameters: 70% of turbines...</b></p> <p>Whilst this issue has previously been raised by the ExA during the examination process, views are sought from the Applicant, the MMO and NE on whether this drafting is sufficiently clear, certain and enforceable, given that it is not specified how much of the 70% must be in each licence. Would it be clearer if a number of turbines was specified?</p>
Applicant's response	As set out above, the Applicant has considered the ExA's comments on the proposed parameter and has discussed this further with the MMO, Natural England and the RSPB. In order to address any concerns in relation to enforceability it has been agreed that the parameters will be amended as set out below:

ID	Comment and Applicants response
	<p><i>[Parameter for Schedule 10]</i></p> <p><i>"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed 52 turbines"</i></p> <p><i>[Parameter for Schedule 11]</i></p> <p><i>"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 1 (generation) taken together must not exceed 52 turbines"</i></p> <p>Copies of emails confirming that the MMO, Natural England and the RSBP agree to the wording set out above are enclosed at Part 2 of the Schedule to this document. The agreed wording will be submitted as part of the Applicant's draft DCO submitted for Deadline 8 on 15 December.</p>

## 6 Annex A

ID	Comment and Applicants response
ExA Comment	<p><b>Consultation Questions: Annex A</b></p> <p>Do the Applicant and Eni UK Ltd. view the options and sample drafting set out in this Annex as providing a means whereby a resolution to concerns expressed on both sides might be approached?</p> <p>What aspects of the options and sample drafting are supported and why?</p> <p>What aspects of the options and sample drafting are not supported and why?</p> <p>Particularly, would the preparation of a 'proximity agreement' as a private legal agreement but subject to arbitration, or a 'proximity plan' with the MMO as decision-maker, appear to offer a means of resolving the current concerns?</p>

ID	Comment and Applicants response
	<p>If aspects of the options and sample drafting are not supported, the Applicant and Eni UK Ltd. are encouraged to develop and where possible to agree alternative drafting that would address the concerns raised.</p>
Applicant's response	<p>Please see the Applicant's response contained in the Applicant's Response to Consultation Questions (document reference: Deadline 7 / Applicant's Response to Consultation Questions).</p>
ExA Comment	<p><b>Proposal 1</b> – to add a specific arbitration requirement to deal with a dispute under protective provisions, having regard to appropriate technical expertise.</p>
Applicant's response	<p>Please see the Applicant's response contained in the Applicant's Response to Consultation Questions (document reference: Deadline 7 / Applicant's Response to Consultation Questions).</p>
ExA Comment	<p><b>Proposal 2</b> – to add balanced protective provisions for the benefit of both the undertaker and Eni UK Ltd. enabling the formation of a proximity agreement as soon as this becomes expedient and triggering binding arbitration on disputes as to both timing and content. This would appear to provide a framework in which the policy requirements of both EN-1 and EN-3 referred to above may be met.</p>
Applicant's response	<p>Please see the Applicant's response contained in the Applicant's Response to Consultation Questions (document reference: Deadline 7 / Applicant's Response to Consultation Questions).</p>
ExA Comment	<p><b>Proposal 3</b> – to add a balancing provision requiring the preparation of a proximity plan as soon as this becomes expedient and requiring this to be approved by the MMO. This too appears to provide a framework in which the policy requirements of both EN-1 and EN-3 referred to above may be met. Although having a mutually protective function, this would not appear to be a protective provision in the strict sense of that term. A new article could provide a power to form the plan, and the process for plan formation could be placed into a new Schedule. Alternatively, more detail could be drawn back into Deemed Marine Licences, but the ExA is conscious that it is desirable not to disrupt the drafting of other provisions that have not been the subject of significant contention in the examination.</p>
Applicant's	<p>Please see the Applicant's response contained in the Applicant's Response to Consultation Questions (document reference:</p>

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ID	Comment and Applicants response
response	Deadline 7 / Applicant's Response to Consultation Questions).

# 7 SCHEDULE

## CORRESPONDENCE REFERRED TO IN THE APPLICANT'S COMMENTS ON THE EXA DRAFT DCO

### Part 1: Definition of 'commence'

#### Email from SPR to LPAs

**From:** Morrison, Keith  
**Sent:** 01 December 2016 08:40  
**To:** 'Ben Elvin'  
**Cc:** Lisa Chandler; Philip Perkin; 'Katherine Potts'; 'Redman, Victoria'  
**Subject:** New definition of commence

Hi Ben

Please see below for revised wording from Vicki Redman on the definition of "commence" as discussed on our call earlier this week. Vicki has tried to change as little as possible and instead has just moved the operative part to a new Requirement as suggested by the ExA. The new text is shown in red.

Would be grateful for confirmation that you are happy with the revised wording so that we can advise the ExA accordingly at Deadline 7 on 8<sup>th</sup> December. I understand you will also advise the ExA in your submission at Deadline 7 that you are content with the revised wording including its workability.

Please give me a call should you wish to discuss

Many thanks

Keith

*"commence" means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and, (b) in respect of any other works comprised in the authorised project has the meaning given in Requirement 37 and the words "commencement" and "commenced" are construed accordingly;*

#### **Requirement 37 – Notification of site clearance and archaeological works**

**37(1) For the purposes of any works landward of MHWS "commence" means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements, save that site clearance works landward of MHWS and archaeological works within Work Number 67 must first have been notified to the relevant planning authority for confirmation that the works do not constitute commencement and either:**

*(a) the relevant planning authority has confirmed that the works do not constitute commencement;*

*(b) no response has been received by the undertaker within 5 working days of notification (the "initial period"); or*

*(c) within the initial period the relevant planning authority requests in writing an additional period of 10 working days to make such a determination and no response is received by the undertaker within that additional period of 10 working days*

*in which case the works shall be construed not to constitute commencement, and the words "commencement" and "commenced" are construed accordingly;*



**Email from LPAs to SPR**

**From:** Ben Elvin [<mailto:Ben.Elvin@baberghmidsuffolk.gov.uk>]  
**Sent:** 05 December 2016 12:06  
**To:** Morrison, Keith  
**Subject:** RE: New definition of commence

Hello Keith

I have spoken to Phil and Lisa, and John came back to me last night. We are happy with the revised wording.

Kind regards

Ben

**Ben Elvin MSc, MRTPI**  
**Senior Development Management Officer – Key Growth Projects**  
**Babergh and Mid Suffolk District Councils – Working Together**  
**t: 01473 826638 or 01449 724545**  
**w: [www.babergh.gov.uk](http://www.babergh.gov.uk) [www.midsuffolk.gov.uk](http://www.midsuffolk.gov.uk)**

**IMPORTANT SERVICE DOWNTIME ANNOUNCEMENT**

We will be introducing a new planning software system in Spring 2017. There will be some service disruption but we will keep you updated with specific dates closer to the time. Thank you for your patience.

## Part 2: Draught height requirement and DML parameter

### Email from SPR to MMO

**From:** Sutherland, Gillian  
**Sent:** 15 November 2016 10:40  
**To:** [Alan.Gibson@marinemanagement.org.uk](mailto:Alan.Gibson@marinemanagement.org.uk); [Kathleen.Mongan@marinemanagement.org.uk](mailto:Kathleen.Mongan@marinemanagement.org.uk)  
**Cc:** Walker, Catherine; Morrison, Keith; [victoria.redman@bonddickinson.com](mailto:victoria.redman@bonddickinson.com)  
**Subject:** EA3 condition wording: Turbine draft height

Hi both,

As you are aware, we have been considering the best form of words to propose to NE, MMO and RSPB in relation to securing that 70% of the total number of turbines would be at 24m MHWS or above (ExA Second Written Questions, HRA11).

We have decided to propose the following wording:

*"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed 52 turbines"*

52 turbines equates to 30% of the total number of turbines (172).

This hopefully addresses your preference that we refer to a number rather than a %age due to concerns in relation to rounding.

Please can you confirm your acceptance of this approach (or any comments) in the next couple of days?

Kind regards,  
Gillian



Gillian Sutherland  
CEnv MIEMA MEnvS  
Senior Environmental Manager

ScottishPower Renewables  
1 Atlantic Quay, Glasgow G2 8JB  
TF : +44 (0) 141 614 0420 /0401  
Mob : +44 (0) 7753 621 713  
[Gillian.Sutherland@Scottishpower.com](mailto:Gillian.Sutherland@Scottishpower.com)

**Email from MMO to SPR**

**From:** Gibson, Alan (MMO) [<mailto:Alan.Gibson@marinemanagement.org.uk>]  
**Sent:** 01 December 2016 13:40  
**To:** Sutherland, Gillian  
**Subject:** RE: EA3 condition wording: Turbine draft height

Dear Gillian,  
Apologies for the delay. I can confirm The MMO are content to accept the proposed wording below,  
Regards  
Alan

## Emails to and from Natual England

From: Thompson, Alex (NE) <Alex.Thompson@naturalengland.org.uk> Sent: Wed 16/11/2016 09:00  
To: Sutherland, Gillian  
Cc: Morrison, Keith; Paolo Pizzolla; Walker, Catherine  
Subject: RE: England's Submissions for Deadline 5 of the EA3 Examination

Hi Gillian

I can confirm that Natural England accept the suggested wording (below) in order to secure the 70% turbines with a draft height of 24m.

We acknowledge that by stating a number of turbines that can be constructed with a lower draft height, rather than a percentage it allows for clearer compliance and monitoring of this condition.

Many Thanks

Alex

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**From:** Sutherland, Gillian [<mailto:Gillian.Sutherland@ScottishPower.com>]  
**Sent:** 15 November 2016 10:45  
**To:** Thompson, Alex (NE)  
**Cc:** Paolo Pizzolla; Morrison, Keith; Walker, Catherine  
**Subject:** RE: England's Submissions for Deadline 5 of the EA3 Examination

Hi Alex,

As you are aware, we have been considering the best form of words to propose to yourself, MMO and RSPB in relation to securing that 70% of the total number of turbines would be at 24m MHWS or above (ExA Second Written Questions, HRA11).

We have decided to propose the following wording:  
*"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed 52 turbines"*

52 turbines equates to 30% of the total number of turbines (172).  
The MMO expressed a preference that we refer to a number rather than a % age due to concerns in relation to rounding so we have decided to specify that the number of turbines under 24m MHWS must not exceed 52 turbines.

Please can you confirm your acceptance of this approach by NE (or any comments) in the next couple of days?

Kind regards,  
Gillian

**Email from RSPB**

From:  Miller, Jacqui <Jacqui.Miller@rspb.org.uk> Sent: Fri 18/11/2016 09:00  
To:  Furlong, Rachel  
Cc:  Walker , Catherine;  Morrison, Keith;  Sutherland, Gillian  
Subject: Re: East Anglia THREE draft height

Hi Rachel

Thanks for your email. Just to confirm that we are happy with the amended DCO condition that you suggest. Also, thank you for sending through the updated SoCG - I'll be in touch with our comments next week.

Have a good weekend.

Jacqui

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**Email to RSPB**

**From:** Furlong, Rachel <[RFurlong@ScottishPower.com](mailto:RFurlong@ScottishPower.com)>  
**Sent:** 15 November 2016 10:36:18  
**To:** Miller, Jacqui  
**Cc:** Walker, Catherine; Morrison, Keith; Sutherland, Gillian  
**Subject:** East Anglia THREE draft height

Hi Jacqui,

I hope all is well with you.

We have been considering the best form of words to include within the DCO with regard to securing that 70% of the total number of turbines would be at 24m MHWS or above, and we have developed the following wording:

*"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed 52 turbines"*

52 turbines equates to 30% of the total number of turbines (172). The MMO expressed a preference that we refer to a number rather than a % age due to concerns in relation to rounding so we have decided to specify that the number of turbines under 24m MHWS must not exceed 52 turbines.

We wanted to get your thoughts on this and will also be consulting NE and the MMO on the proposed wording this week. If you were able to let us know your thoughts by close of play on Friday, that would be most helpful.

We are also currently reviewing and updating the Statements of Common Ground and hope to have a revised draft with you shortly for comment and consideration.

Please let me know if you have any queries.

Many thanks

Rachel

**ScottishPower Renewables**  
**Offshore Wind Development**

Address: 4th Floor, 1 Atlantic Quay, Glasgow, G2 8JB

[Eastangliathree@ScottishPower.com](mailto:Eastangliathree@ScottishPower.com)

