

## **Review of East Anglia THREE Offshore Wind Farm Project**

### **Draft Development Consent Order**

**(01 September 2015)**

The advice within this note is in response to a request from East Anglia Offshore Wind (EAOW) on 6 August 2015 for the Planning Inspectorate (the Inspectorate) to review the draft Development Consent Order (DCO) for the proposed East Anglia THREE (EA3) offshore wind farm project. The Inspectorate's comments on the draft DCO are set out below. These comments are provided without prejudice to any decisions taken by the Secretary of State during acceptance or by the Examining Authority (ExA) during examination, if the application for the proposed development is accepted for examination.

Currently the Inspectorate is unable to provide detailed advice as a result of the lack of some of the detail in the DCO and the absence of any Explanatory Memorandum or works plans. The Following general observations are provided to aid with the revision of the DCO prior to the submission of the next iteration of the DCO for review.

#### *Project phasing*

Currently Schedule 1 does not detail all of the works. Although the Inspectorate is aware that the applicant intends the DCO to allow for the project to be constructed either as a single phase or in two phases, as currently drafted there is confusion as to what is proposed. Schedule 1, work no 1 indicates there is to be one project for 1200MW with 172 Wind Turbine Generator's (WTG). However the two sets of transmission and generation Deemed Marine Licences (DML) imply there are two projects each for 600 MW with 86 WTG's.

Without understanding the nature of the two phases it is difficult to provide specific advice. For example it should be clear if each phase is to be two completely separate projects, (i.e. A & B) which will have their own limits of deviation within which each can be constructed or if a greater degree of flexibility is sought allowing each project to build out over all or the order limits the exact location to be decided at a later date. Which approach is to be taken will influence the articles and levels of protection that needs to be built into the DCO.

It is currently unclear whether the intention is for the 2 projects to be built by the same undertaker or how the two projects will interact with each other, e.g. will they be built out together or separately.

At present the DML's both say they are granting a licence for work no 1 but describe work no 1 as 86 turbines which implies that both DMLs are for exactly the same thing, and it is contrary to the DCO description of work no 1.

The DCO (including the DMLs) must be drafted in such a way that the development for which consent is sought is explicitly clear and easy to understand. The DCO must ensure that there are sufficient controls to prevent

any development from occurring outside that assessed within the Environmental Statement.

The DML's must adequately reflect the DCO and they must be workable and enforceable.

It is also necessary to clearly explain how the 2 phases will interact, eg setting out how the phases will be managed and controlled. It will also be necessary to explain how any interactions with the East Anglia ONE project will be managed and controlled.

It would be beneficial to have regard to the Hornsea One and Dogger Bank Creyke Beck and Dogger Bank Teesside A&B DCO's to assist with the phased approach.

### *Special category land*

DECC have demonstrated a preference for this to be addressed in the preamble rather than a specific article. This approach has been taken in the made Orders for Walney, Dogger Bank Creyke Beck and Dogger Bank Teesside A&B. You are advised to consider applying this approach.

You should also ensure that the nature of the rights sought over this land are clearly identified and that the compulsory acquisition powers granted by the DCO are limited to these rights. You will need to clearly set out the case for s.132 consent in the statement of reasons.

### *Definition of commencement*

Please have regard to the advice in DCO drafting Advice Note 15 paragraph 23.

### *Cross-referencing*

All cross re-referencing to requirements, works and articles should be correct. Currently there appears to be some inconsistencies. For example in Article 2 (3) is reference to requirement 10 correct or should it be requirement 12 and should it also apply to requirement 2? In Article 5 (4) should reference to paragraph (8) be paragraph (6)?

### *Compulsory Acquisition*

It is necessary to demonstrate that the compulsory acquisition tests in s.122 are met for all compulsory acquisition of land and rights including new rights.

Article's 15 and 17 are both very wide powers which grant the compulsory acquisition of land and rights over any of the order land as is required for the project or is incidental to it. You must ensure that all of the land and rights you are seeking to acquire, both existing and new, are adequately identified and described either in the book of reference or the DCO and that the compulsory acquisition powers sought are limited to those that are identified. Please also note that Annex D of the DCLG guidance on compulsory acquisition states at paragraph 10 "where it is proposed to create and acquire new rights

compulsorily they should be clearly identified. The book of reference should also cross-refer to the relevant articles contained in the development consent order”.

Article 23(8)(a) authorises the compulsory acquisition of new rights in the land contained in schedule 8 which is described as “land of which temporary possession should be taken”. You should ensure that any new rights you wish to acquire in this land are clearly described and justified and that the relevant landowners are aware that you are seeking compulsory acquisition of new rights in their land as well as temporary possession. If the creation of new rights is sought this is a compulsory acquisition power and the ExA will need to be satisfied that the s.122 tests are met in relation to each new right to be created.

#### *Crown land*

You should ensure that every Crown interest that is not held otherwise than by or on behalf of the Crown is expressly excluded from compulsory acquisition. Article 37 does not achieve this on its own as (a) appears to permit the Crown to consent to ‘take’ Crown interests and land. This is not permissible in accordance with s.135 Planning Act 2008

#### *Importation of TCPA appeals procedures*

Please consider the Inspectorate’s DCO drafting Advice Note 15 section 22 and ensure that Article 34 does not oust the National Infrastructure Environmental Impact Assessment Regulations 2011.

#### *Requirements*

Currently it difficult to comment on the specific requirements as many of them relate to work numbers for works which are not yet included within schedule 1. However it is noted that a staged discharge of requirements is proposed (ie requirement 11). You should ensure that they have fully consulted with all relevant Local Planning Authorities in relation to this as it will have implications for them as the discharging authority. If there are to be 2 phases, depending on how they might interact, the staged discharge approach might prove more complicated.

#### *Conclusion*

The Inspectorate recommends that the DCO is updated taking the above comments into account.