

## SPR EA1N and EA2 PROJECTS



### DEADLINE 2 – COMMENTS ON EXQ1 RESPONSES - 1.5 DCO

**Interested Party:** SASES

**IP Reference Nos.** 20024106 and 20024110

**Issue:** 3

Reference	Question	Response	SASES Comment
1.5.4	<p>Art 11 provides for the temporary stopping up of public rights of way.</p> <ol style="list-style-type: none"> <li>1. a) Is it envisaged that public rights of way would be reopened if there were to be a significant gap in construction of the two projects?</li> <li>2. b) Does the drafting of this article adequately reflect the potential for the implementation of each project to a separate timescale?</li> </ol>	<p>a) Estimated durations for the temporary stopping up of public rights of way are set out in <b>Appendix 8.4 Outline Public Rights of Way Strategy</b> of the ES (APP-581). <i>Diversions will be agreed with the relevant local authority in advance and set out in a final Public Rights of Way Strategy. Typically, the temporary stopping up of public rights of way will be for short periods of time only (a number of weeks depending on the length of the right of way to be closed). A small number of temporary closures would be of longer durations. Temporary closures are necessary to allow for safe construction of the onshore infrastructure (including haul road construction and removal).</i></p> <p>Notwithstanding the above, all temporary stopping up of PRow will be reopened should there be a gap in the construction of both Projects</p>	<p>Given there are two DCOs where the construction periods may be concurrent, overlapping or sequential this is extremely unclear. The applicant should be asked to clarify specifically what the situation would be with the footpath network to the north of Friston, all of which traverses the development area. Of course not only are there two separate Scottish Power NSIPs but also the National Grid NSIP which no doubt will be constructed by National Grid through its own contractor. Given the multiplicity of works and the lack of clarity over the construction period should an assumption be made that in reality all footpaths to the north of the village will be closed for the duration of however long the construction period might be and impacts should be determined on this basis.</p>

		<p>b) Yes, each Project is the subject of a separate draft DCO and Article 11 will apply in relation to each Project in the context of the timescales in which that Project is brought forward. Interference with PRow will be managed through the PRow Strategy which is secured by Requirement 32 of the draft DCO and which must be approved by the relevant planning authority.</p>	
1.5.6	<p>Art 19 provides for the time limit for the exercise of CA powers to be 7 years. The EM [APP-025] states that this period is necessary due to the scale and complexity of the project and uncertainties associated with the Contracts for Difference process and contractor and supply chain availability.</p> <ul style="list-style-type: none"> <li>Please provide further detailed justification for the proposed 7 year time limit.</li> </ul>	<p>Requirement 1 of the draft Development Consent Order (APP-023) states:</p> <p><i>“The authorised project must commence no later than the expiration of seven years beginning with the date this Order comes into force”.</i></p> <p>The seven-year time limit for the consent is requested in order to maximise the window for the Projects to commence construction, particularly in light of the uncertainties associated with the current Contracts for Difference support mechanism regime the industry operates in, which is outwith the control of the Applicants.</p> <p>Taking into account project funding, Final Investment Decisions and contracting (all post CfD activities), a seven-year consent time limit is appropriate in order to ensure sufficient time for the Projects to participate in further CfD allocation rounds.</p>	<p>Given the government's policy for ever increasing amounts of offshore wind energy and the fact that the CFD regime operates every two years in practical terms it is difficult to understand why a seven year period is justified. Presumably the applicant will be seeking a CFD for both projects at the next available opportunity and the time limit should be set by reference to the timing of the next CFD auction.</p>

		Article 19 of the draft DCO therefore seeks a seven-year time limit in order to be consistent with the time limit in Requirement 1.	
1.5.10	<p>Art 26 provides for temporary use of land (TP). The two East Anglia projects may be constructed concurrently or sequentially, with or without a time gap in between. This may have implications for landowners in terms of the duration of any TP. The drafting of Art 26(3) does not appear to address the potential for the construction of the other East Anglia project with a gap in construction works.</p> <p>a) When would a decision on the approach to construction of the two projects be made?</p> <p>b) How would this be communicated to landowners and others with an interest?</p> <p>c) Is it envisaged that the undertaker would remain in possession of land used under Art 26 during any gap in construction?</p> <p>d) How does this article as drafted limit the impacts on landowners and others with an</p>	<p>a) A decision on the approach to construction of the Projects would be made after the grant of the Development Consent Order and once the Final Investment Decision (FID) has been reached.</p> <p>b) The Applicants would keep landowners and others with an interest in land abreast of the project developments. In addition, where a land agreement is obtained by the Applicants there will be provisions on timings and notices and where temporary possession powers or other compulsory acquisition powers are to be exercised, the requisite notice will be given.</p> <p>c) If the gap in construction was such that it was less impactful and would cause less disturbance for the Applicant to remain in possession of land then this is something that would be considered and explored with the relevant landowner.</p> <p>d) Article 26(3) provides that the undertaker is not permitted to remain in possession for longer than is reasonably necessary, and must not remain in possession for more than a year following completion of the relevant part of the works (unless otherwise agreed with the</p>	<p>Much greater thought needs to be given as to how the three NSIPs (National Grid, EA1N and EA2) interrelate to minimise the disruption from construction. The separate approach for each of the applicant's projects is designed purely to support the financial objectives of the applicant and maximise the value of each consented project as an investment proposition to 3<sup>rd</sup> parties. It is possible that Scottish Power/Iberdrola will seek to sell either or both of the applicants complete with its consented project.</p> <p>There is no justification for these projects to be built sequentially. This is not driven by the need for renewable energy but by the financial objectives of the current owners of the applicants</p> <p>The sale of the applicant is effectively the transfer of the DCO but would not be subject to Article 5 of the DCO. The DCO is defective since it does not appear to contain a change of control clause. This is of particular concern since both applicants are "SPVs" and have limited financial resources and assets other than by virtue of their membership of the Iberdrola group</p>

	<p>interest in the event that the projects are constructed sequentially?</p> <p>e) Insofar as this flexibility has impacts on the use and enjoyment of land, how would those impacts be minimised and/or mitigated?</p>	<p>landowner) which is included to help limit the impacts in the circumstances outlined in the question. There is therefore a mechanism for flexibility but only with agreement of the relevant landowner.</p> <p>e) If the flexibility has impacts on the enjoyment of land then this will be dealt with as a matter of compensation.</p>	
1.5.11	<p>Requirement (R)1 provides for the time limit for commencing the authorised development to be 7 years. The EM [APP-025] is silent on the reasons for this.</p> <ul style="list-style-type: none"> <li>Please explain why you propose a 7-year time limit.</li> </ul>	<p>A 7-year time limit is required due to the scale and complexity of the Projects, uncertainty around the timing and outcome of future rounds for Contracts for Difference as well as unknown contractor and supply chain availability. We would refer to the response to question 1.5.6 above for further details explaining the proposed 7-year timescale. The explanation for proposing a 7-year time limit at Requirement 1 is the same explanation for Article 19 providing for a 7-year time limit.</p>	<p>Refer to comments on 1.5.6 above</p>
1.5.15	<p>R30 refers to onshore decommissioning. The drafting assumes that an onshore decommissioning plan will be submitted to and approved by the relevant planning authority within six months of the cessation of commercial operation.</p> <p>a) How would this condition be enforced if no scheme were submitted?</p>	<p>a) Requirement 30, along with the other requirements in the draft DCO, would be subject to the provisions of Part 8 of the Planning Act 2008, which govern enforcement of provisions in DCOs. Section 161(1)(b) of the Planning Act 2008 states that it is a criminal offence to, without reasonable excuse, fail to comply with the terms of a DCO.</p>	<p>Sub question (b) has not been adequately answered unless the applicant is saying that any failure by the relevant planning authority to approve an onshore decommissioning plan would be a breach by the undertaker of the DCO. If that is the applicant's position then this needs to be expressly stated in the DCO</p>

	<p>b) What would happen if the scheme were not approved? and</p> <p>c) what precedents are there for alternative mechanisms to secure proper decommissioning of comparable onshore infrastructure?</p>	<p>In relation to Requirement 30, if the undertaker were to commence decommissioning without having had a plan approved, it would be committing a criminal offence. Further, the full range of enforcement powers available to the planning authority under Part 8 of the Planning Act 2008 would be engaged.</p> <p>b) Requirement 30 provides that onshore decommissioning plans in respect of the transmission and connection works are submitted to <i>and approved by</i> the relevant planning authority within six months following the permanent cessation of the commercial operation of the works. The onus is on the undertakers to ensure compliance with this Requirement and the undertakers would therefore need to work with the relevant planning authority to secure approval of the plans within the six month timescale. In the event that this Requirement was not complied with, this would constitute a breach of the DCO, and again enforcement action could be taken under Part 8 of the 2008 Act.</p> <p>c) The Applicants have considered precedents relating to the decommissioning of comparable onshore infrastructure, and are unaware of any alternative mechanisms used other than a Requirement similar to Requirement 30 in the <b>draft DCO</b>. Examples of DCOs granted for offshore wind farms with a requirement similar to draft Requirement 30 include:</p>	
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1.5.19	<p><b>Schedule 15 – Arbitration</b></p> <p>Paragraph 6(3) provides for costs to follow the event and Paragraph 7 provides for confidentiality.</p> <p>a) What is the justification for imposing costs on regulatory bodies who may be acting reasonably in relation to their statutory functions?</p>	<p>It is not intended for the arbitration provisions to apply to regulatory bodies.</p>	<p>It should be noted that the applicant provides no justification in respect of the confidentiality of the proposed arbitration process. See further SASES written representation in respect of the draft DCO</p>

	<p>b) What is the justification for seeking confidentiality where matters of public interest and environmental protection are involved, and can it lawfully be delivered in circumstances where transparency is provided for (eg as a consequence of the UK's signature to the Aarhus Convention)?</p>		
1.5.21	<p><b>Matters Unsecured: Mitigation Schedules</b></p> <p>The ExA consider that Mitigation Schedules should be certified under Art 36, ensuring that relevant commitments are secured and are easily located during construction, operation or decommissioning as necessary.</p> <ul style="list-style-type: none"> <li>• The Applicant is requested to amend draft Art 36 accordingly.</li> </ul>	<p>The Schedules of Mitigation are signposting documents which set out the mitigation measures proposed within the ES and how such measures are secured, they do not secure any mitigation measures.</p> <p>All mitigation is captured within the DCO requirements, DML conditions or in the plans and documents secured within the draft DCO.</p> <p>It is therefore not considered to be necessary or appropriate for the Schedules of Mitigation to be listed as certified documents within Article 36 of the draft DCO.</p>	<p>The applicant's answer begs the question of what happens if mitigation is not fully captured within the DCO requirements.</p> <p>There should be a "failsafe" provision to the effect that if mitigation measures have not been effectively secured by the DCO in respect of mitigation of environmental Impacts then the mitigation schedules should determine the mitigation to be provided by the applicant. The mitigation schedules should be certified accordingly</p>

<p>1.9.7</p>	<p><b>Agriculture: land take effects</b></p> <p>Table 21.8 [APP-069] defines high, medium and low magnitudes of impact, with reference to permanent loss of more than 10ha or temporary loss of more than 20ha of Grade 4 land as having a low impact, and with a small area (less than 1000m<sup>2</sup>) permanently lost having a negligible impact.</p> <p>Table 21.9 [APP-069] shows significance of impact and paragraph 48 states that “The assessment of impact significance is qualitative and reliant on professional experience, interpretation and judgement.”</p> <p>Please provide further detailed justification for how the magnitude of impacts of loss of best and most versatile agricultural land is determined: in particular –</p> <ul style="list-style-type: none"> <li>a) why do you consider that a medium to long term loss of 20ha of land is to be regarded as a medium magnitude impact rather than a high magnitude impact?</li> <li>b) How is severance, whether temporary or permanent, taken into account, particularly severance associated with smaller agricultural holdings?</li> <li>c) how does the methodology assess smaller agricultural or other holdings for which a 10ha permanent loss or a 20ha temporary loss would be seen by the owners and/or occupiers as having more than a negligible impact?</li> </ul>	<ul style="list-style-type: none"> <li>a) Medium to long term loss of 20ha of land is regarded as medium magnitude instead of high due to the emphasis on the impact being of a temporary nature as opposed to permanent. Permanent loss of 20ha or more is regarded as a high magnitude. The Applicants also refer to the Land Use Clarification Note (ExA.AS-11.D1.V1) submitted at Deadline 1.</li> <li>b) The Applicants are in discussion with all landowners of agricultural holdings affected by severance as a result of the Projects. Access for farm vehicles to land severed by the Projects would be maintained where practicable in consultation with and subject to agreements with individual landowners and occupiers and adherence to safety procedures. Where necessary, crossing points would be agreed pre-construction. Access to individual fields would be determined as part of the Applicants’ detailed design and pre-construction planning. It is however likely that relatively small areas or strips of land would be affected.</li> <li>c) In undertaking an EIA, judgement on impact is always related to scale, the impact on an individual receptor will clearly be greater if judged at the scale of that receptor rather than the wider class of receptor. For example, loss of 20m of a 30m hedgerow would be a major magnitude for that hedgerow, but not for the wider resource. Similarly, the land use assessment cannot be undertaken on the basis of impacts upon individual landholdings.</li> </ul>	<p>The loss of BMV land at the substation site is permanent Given the operational life of the applicants substations and the national grid connection hub as noted in the applicants answer to the SQ 1.9.8</p>
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1.9.8			Given the applicants under stating the impact on land during operation we question the assessment of impact during construction
1.9.9	h) Please explain how the test in paragraph 5.10.8 of the NPS is satisfied in respect of the choice of connection point, the cable route and the related infrastructure (re- working agricultural land calculations if necessary to do so).	<p>Paragraph 5.10.8 of NPS EN-1 states <i>“Applicants should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations.”</i></p> <p>During the site selection process the Applicants assigned weighting to Agricultural Land Classifications as described in Appendix</p>	<p>As stated in SASES’s Written Representation – Site Selection, the site selection process is flawed both in respect of the applicants NSIPs and the National Grid NSIP.</p> <p>This response proves the point.</p> <p>The permanent loss of approaching 40 ha of BMV land is a major impact and the applicants have not sought to minimise impacts on BMV land contrary to paragraph 5.10.8 of EN-1</p>

		<p>B of <b>Appendix 4.2 Red Amber Green (RAG) Assessment for Onshore Substations Site Selection in the Sizewell Area</b> (APP-443). Grade 1 was assigned red, Grade 2 and 3 amber and Grade 4 green which reflect the BMV ALC classifications. This formed part of the Applicants' quantitative site selection assessment alongside other site constraints.</p> <p>The amount of BMV land within the entire onshore development area as a percentage of total BMV land in Suffolk is 0.14%. This is negligible in the context of Suffolk's regional farming resource. There is no agricultural land of the highest quality (Grade 1) within the proposed onshore development area. It is the view of the Applicants therefore that the NPS has been complied with.</p>	
1.9.13	<p><b>Agricultural impacts: magnitude and duration</b></p> <p>Section 21.4.3 and tables 21.8, 21.9 and 21.10 [APP-069] refer to the magnitude and significance of impact on a receptor.</p> <p>Referring to the landfall and the onshore cable route, paragraph 112 states that "[t]he magnitude of effect is considered to be negligible given that there is no permanent change to land use for the onshore cable route and landfall, with only temporary restriction to agricultural activities ...". Please:</p>	<p>a) Yes, this refers to the magnitude of the impact.</p> <p>b) As described in <b>Table 21.8 of Chapter 21 Land Use</b> (APP-069), a temporary time period is defined as less than five years.</p> <p>c) The restriction on agricultural activities is temporary because there would be no above ground infrastructure at the landfall and onshore cable route, therefore impacts occur only during construction. There will be no permanent change to land use for the onshore cable route and landfall during operation.</p>	<p>(b) and (c) Given the lack of clarity over whether construction will take place concurrently or consecutively and that there may be a gap between projects it would seem difficult for the applicant to say with certainty that the overall duration of construction from the commencement of one project to the completion of another project will only be five years</p>

	<p>a) confirm that you are referring to the magnitude of impact;</p> <p>b) explain what time period constitutes temporary; and</p> <p>c) explain why the restriction on agricultural activities is only temporary.</p>		
1.9.15 and 16	CC		
1.9.20	CW		
1.9.21 PRoW Strategy	Explain what measures you will take to avoid nuisance and ensure the safety, amenity and quiet enjoyment by those using them in the vicinity of the construction works, with particular reference to the Suffolk Coastal Path	The Applicant has answered this question mainly in relation to the landfall location at Thorpeness.	SASES asks for an explanation of what measures will be taken with regard to the PRoW network on the substation site at Friston during the construction period. Specifically what footpaths will be open and available for use and how safety, amenity and quiet enjoyment can be maintained.