

The Planning Act 2008

East Anglia One North (EA1N) and East Anglia Two (EA2) Offshore Wind Farms

Planning Inspectorate Reference: EA1N – EN010077, EA2 – EN010078

Deadline 6 – 24 February 2021

Issue Specific Hearing 9 – draft Development Consent Orders

Summary of SCC Oral Case

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Agenda Item 2 – Progress Position Statement by the Applicant: Changes to the Drafts in Progress since ISHs 6		
<p>The ExAs will ask the Applicants to present progress since ISHs6.</p> <p>The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.</p> <p>The Applicants will be provided with a right of reply.</p>	<p>SCC made submissions on 6 matters under Agenda Item 2 as follows:</p> <p>(1) the Applicant's proposals for an Onshore Preparation Works Management Plan (OPWMP).</p> <p>SCC welcomes the principle of an OPWMP to be secured by a Requirement of the DCO. When the specific provisions are set out, SCC will comment further on the detail of what is proposed.</p> <p>However, SCC does have some concerns over the mechanisms for the control/regulation of the 'onshore preparation works', noting that they are defined in an expansive manner in Article 2(1) and that they are excluded from the various commencement requirements in the DCO (such as Requirement 22 in relation to</p>	

the CoCP) by reason of Article 2(1)'s definition of 'commence'. SCC is therefore expecting that the new Requirement to secure an OPWMP will provide clarity as to how the 'onshore preparation works' are to be regulated.

Public Rights of Way

SCC notes that a recent change to Requirement 32 moves from a 'commence' trigger to an 'undertaken' trigger but this latter term is not defined, and it is unclear whether Requirement 32 would now apply to any onshore preparation works affecting a Schedule 3 or Schedule 4 PRow so as to require prior approval of a PRow strategy. In addition, the PRow proposed as pre-construction access are not listed in Schedule 3 or 4. SCC considers that any effects of onshore preparation works on a PRow should be assessed in accordance with an approved PRow strategy and the Applicant is asked to ensure that this is achieved in its proposals in relation to the OPWMP. If Req 32 doesn't apply, and matters are not regulated by the OPWMP, then the Applicant will have to comply with the Highways Act re disturbance and

obstruction, and seek TTROS from SCC for closures if the tests are met.

Highways

SCC also has a concern that there is scope for an overlap between the OPWMP and the Outline Access Management Plan (OAMP) under Requirement 16 which includes the transport matters such as routing, refers to the CoCP for working times but does not consider noise. In terms of routing HGVs for access construction it is in both the OAMP and what SCC understands will be in the OPWMP, but discharged by different authorities. SCC asks the Applicant to ensure that all highways matters, including those arising from the onshore preparation works, are regulated by SCC as LHA.

(2) Archaeology

The applicants have indicated that they will be updating the wording of Requirement 19 in line with SCC comments. Once amended to the wording below, SCC will be in a position to support this revised wording.

19. (1) No intrusive onshore preparation works (including pre-commencement archaeological surveys, archaeological investigations or site preparation works in respect of such surveys or investigations) may be carried out until a pre-commencement archaeology execution plan (which accords with the outline pre-commencement archaeology execution plan and the outline written scheme of investigation (onshore)) in respect of those works has been submitted to and approved by Suffolk County Council in consultation with the relevant planning authority. (2) Intrusive onshore preparation works must be carried out in accordance with the approved plan.

SCC support the amended wording of Requirement 20.

SCC are pleased that previous comments regarding the definition of the Outline WSI have been addressed and that archaeology is now specifically referred to.

Other comments previously provided by SCC on other elements of the revised draft Development Consent Order with regards to archaeology (ESC and SCC LIR appendix 2)

have not been addressed within the revised draft DCO (as highlighted at Deadline 4 and 5). These are: Points 13 on pages 71, 75, 87 and Point 16 on page 81 in Schedule 7 of the draft DCO regarding the right to remove artefacts are intended to allow archaeological work to go ahead, but the wording potentially undermines the precautionary approach as worded regarding preservation in situ where remains are significant, as it reduces the considerations down to cost.

SCC therefore sought confirmation from the Applicant that the terms of Schedule 7 (concerning private rights) were not intended or capable of undermining or overriding the need to comply with Requirements 19 and 20, and that if discharge of those Requirements entailed preservation in situ, the rights given by Schedule 7 would not override that. The Applicant provided oral confirmation that this was correct and SCC expects written confirmation to be provided in the Applicant's Summary of its Oral Case at D6.

(3) Proposed changes to Schedule 16

SCC welcomed the proposal by the Applicant to increase the discharge of requirements period to 56 days, and reserved its position on whether the overall revisions to Schedule 16 addressed its concerns until it had seen the full details of what was proposed.

(4) Articles 12, 13, and 15 in relation to a deemed approval if no decision within 28 days.

SCC expressed concern that the 28 day period was too short for due consideration of the highways issues arising under these Articles and suggested that a 56 day period would be appropriate, in line with the suggested discharge period for Requirements.

(5) Protective provisions for the LHA: this is dealt with under Agenda Item 3.

(6) SCC has raised concerns (REP5-054, section 3.3) about the absence of recognition in Article 16 of the need for Land Drainage Consent under the Land Drainage Act 1991. The Applicant provided oral confirmation that the DCO did not contain any exclusion of the requirements

	<p>of the Land Drainage Act 1991 and suggested that recognition of this in Article 16 was unnecessary. SCC notes that a different approach has been taken in relation to the Environmental Permitting Regulations 2016 in Article 16 and would welcome clarification of the reason for the different approach. Subject to that, SCC would welcome written confirmation from the Applicant that Article 16 does not dispense with the need for Land Drainage Consent.</p>	
<p>Agenda Item 3 – Protective Provisions:</p>		
<p>The ExAs will inquire into progress on protective provisions for the existing and new nuclear power station development, operation and decommissioning processes at Sizewell.</p> <p>The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.</p> <p>The Applicants will be provided with a right of reply.</p>	<p><u>Highways</u></p> <p>The LHA notes that the applicant has proposed protective provisions for SZB (REF5-023) and SZC (EP5-024). The applicant has entered into discussions with SCC regarding Highways Act s278 agreements for all works within the public highway. These agreements could be modified to include the protection of the LHA duties of inspection and maintenance together with physical and financial protection of the authority’s apparatus although until such time as the details of the s278 are legally robust the LHA maintains its requirement for protective provisions. Any</p>	

agreement will also need to be binding if the DCO is transferred to another party. We are not at this stage yet.

SCC drew attention to the inclusion of protective provisions in favour of the local highway authority in respect of highways assets in 'linear' DCOs elsewhere:

- National Grid (Hinkley Point C Connection Project) Order 2016 (SI 2016/49, Schedule 15, Part 3;
- National Grid (Richborough Connection Project) Order 2017 (SI 2017/817, Schedule 14, Part 3;
- A303 Sparkford to Ilchester Dualling Development Consent Order 2021/125, Schedule 8, Part 4.

SCC is happy to continue the dialogue with the Applicants for alternative mechanisms to protect its assets, but in the absence of suitable and effective arrangements being in place (including addressing the issue of any transfer of the benefit of the DCOs), SCC maintains its view that protective provisions are needed.

The ExAs will review the need and possible drafting approaches to provisions enabling responses to emerging policy (Energy White Paper, BEIS Offshore Transmission Systems Review, Ofgem regulatory change including:

- a. Timing of delivery of the proposed developments (the Applicants' proposal to dispense with extended commencement);
- b. Flexible adaptation of transmission connection alignments; and
- c. Consequential adjustments to Compulsory Acquisition (CA) and Temporary Possession (TP) provisions if necessary.

The ExA will invite submissions from IPs who wish to raise matters in relation to this item.

The Applicants will be provided with a right of reply.

Landscape

SCC noted that in relation to flexible adaptation it has put forward a Design Principle at D5 (REP5-056) to address item 4(b) in part.

Agenda Item 5 – Security for Technical Processes

The ExAs will review the need and possible drafting approaches to provisions securing the provision of such HRA compensation measures as may be advanced without prejudice. (ISH3 Agenda Item 2 refers).

The ExA will invite submissions from IPs who wish to raise matters in relation to this item.

The Applicants will be provided with a right of reply.

Agenda item 6 – Agreements and Obligations

The ExAs will consider the need for and progress on any commercial agreements and planning obligations. Progress on the MOU approach with local authorities will be reviewed. What needs to be agreed, documented and secured before the close of the Examinations?

The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.

The Applicants will be provided with a right of reply.

Highways

In the LIR (21.123) the LHA stated that agreements or obligations were required to cover

1. Additional costs for cyclic and routine maintenance: **not resolved.**
2. Structural surveys of highway condition and remedial work as required (included in OCTMP REP3-033 section 4.1.4). **No further action required.**
3. Fees for s278 technical approval and inspection of highway works. Can include any costs associated with

speed camera: **in discussion with applicant.**

4. Costs speed limit changes (temporary or permanent): as not included in DCO powers remain with LHA so **applicant will have to follow existing LHA processes. No further action required.**
5. SCC's costs for monitoring the CTMP and WTP: **not resolved.**
6. Costs associated with AIL movements. **applicant will have to follow existing LHA processes. No further action required.**
7. Stratford St Andrew AQMA monitoring: **see ESC response** but understood to have been resolved by applying proportional controls to EURO classification of HGVs.

This position was again detailed in the SCC LHA response at deadline 5 (REP5-055). The Applicant states in REP5-011 Part 2.5 Traffic and Transport ID1 that they are discussing a PPA for recovery of cost which would include items 1 and 5 above but to date little progress has been made in this respect. SCC welcomes the Applicant's oral statement that it intends to offer a PPA and potentially a s.278 agreement and looks

forward to further dialogue on these matters.

Rights of Way



SPR agreed in the SoCG (REP1-072 LA15.13) that they would provide reasonable funding for SCC under a planning performance agreement or similar for the certification of new PRoW routes, inspection of alternative rights of way and of PRoW when reinstated. This would be a satisfactory mechanism for PRoW going forward.

Socio Economics

SCC's position on the MOU is as set out at Deadline 5 in REP5-058, section 6.

Possible requirement in the dDCO - The ExA indicated that a formal commitment in respect of the Memorandum of Understanding ("MoU") should be secured through a requirement in the draft DCO. SCC remains of the firm view that the MoU, for it to work most effectively, should sit outside of the DCO.

		<p>The MOU seeks to recognise that to maximise the economic benefits from offshore wind we need to work in partnership and collaboration. Not only as applicant and SCC but also alongside the growing local supply chain, developers, and industry leaders that make up our regional cluster.</p>	
<p>Agenda Item 7 – Consents of Parties</p>			
<p>The ExAs will consider the need for and progress on the grant of Crown consents and any other consents required from IPs.</p> <p>The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.</p> <p>The Applicants will be provided with a right of reply.</p>			
<p>Agenda Item 8– Other Consents</p>			
<p>The ExAs will consider the need for, co-ordination with and progress on any consents beyond the NSIP regime and not</p>		<p><u>Highways</u></p> <p>LHA consent (article 14) will be required for</p> <ul style="list-style-type: none"> • All temporary speed limits. 	

<p>provided for in the dDCOs, but necessary for delivery.</p> <p>The ExAs will invite submissions from IPs who wish to raise matters in relation to this item.</p> <p>The Applicants will be provided with a right of reply.</p>		<ul style="list-style-type: none"> Any closure of highways including PRoW not listed in schedules 3, 4 and 5. <p><u>Flooding</u></p> <p>Land Drainage Consent will be required, under the Land Drainage Act 1991, for any works (temporary or permanent) to an ordinary watercourse. Any application for Land Drainage Consent must be compliant with Suffolk County Councils Policy (Ref 1)</p>	<p>Ref 1 - https://www.suffolk.gov.uk/assets/Roads-and-transport/Flooding-and-drainage/Strategy-Appendicies/2018-10-01-Consenting-Works-Appendix-B-v2-LR.pdf</p>
<p>Agenda Item 9 - Any other business relevant to the Agenda</p>			
<p>The ExAs may raise any other topics bearing on the structure and drafting of the dDCOs, certified documents and related agreements that bear on the dDCOs as is expedient, having particular regard to matters bearing on the dDCOs raised in ISHs 7 and 8 and CAHs3 and the readiness of the persons present to address such matters.</p> <p>The ExAs may extend an opportunity for participants to raise matters relevant to the topic of these hearings that they consider should be examined by the ExAs.</p>			

If necessary, the Applicants will be provided with a right of reply.

Agenda Item 10 - Procedural decisions, review of actions and next steps

The ExAs will review whether there is any need for procedural decisions about additional information or any other matter arising from Agenda items 2 to 9.

To the extent that matters arise that are not addressed in any procedural decisions, the ExAs will address how any actions placed on the Applicants, Interested Parties or Other Persons are to be met and consider the approaches to be taken in further hearings, in the light of issues raised in these hearings. A written action list will be published if required.

Agenda Item 11 - Closure of the hearings