



Application by Equinor New Energy Limited for an Order Granting Development Consent for the Sheringham Shoal Offshore Wind Farm Extension Project and Dudgeon Offshore Wind Farm Extension Project

The Examining Authority's proposed changes to the draft Development Consent Order (DC1)

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This document sets out the Examining Authority's (ExA) commentaries and proposed changes to the latest version of the draft Development Consent Order (dDCO) [REP4-003] and the Explanatory Memorandum (EM) [REP4-007]. Responses are due by **Deadline 5, Tuesday 13 June 2023**.

The ExA's proposed changes take into account the evidence in Examination so far. The ExA will consider any further evidence that is submitted until the close of the Examination in its final considerations for the Recommended Development Consent Order (rDCO) to the Secretary of State (SoS). In that regard some aspects that are currently in active discussion may or may not have been included in the proposed changes outlined in this document.

Column 1 sets out the unique reference number to each question which starts with 'DC1' (indicating that it is from dDCO commentary), followed by an issue number, a sub-heading number and a question number. When you are answering a question, please start your answer by quoting the unique reference number.

Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. Please provide a substantive response to the questions directed at you, or indicate why the question is not relevant to you. You may also respond to questions that are not directed at you, should the question be relevant to your interests.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact sadep@planninginspectorate.gov.uk and include 'Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Project' in the subject line of your email.

Responses are due by Deadline 5, Tuesday 13 June 2023.



List of abbreviations

CA	Compulsory Acquisition	MMMP	Marine Mammal Mitigation Protocol
DAS	Design and Access Statement	MMO	Marine Management Organisation
dDML	Draft Deemed Marine License	MoD	Ministry of Defence
dDCO	Draft Development Consent Order	MACAA2009	Marine and Coastal Access Act 2009
EA	Environment Agency	NCC	Norfolk County Council
EM	Explanatory Memorandum	NE	Natural England
ES	Environmental Statement	NH	National Highways
ExA	Examining Authority	NPA2017	Neighbourhood Planning Act 2017
HDD	Horizontal Directional Drilling	NPS EN	National Policy Statement Energy Suite
LA	Local Authority	R	Requirement in the dDCO
MCZ	Marine Conservation Zone	SoS	Secretary of State
MEEB	Measures of Equivalent Environmental Benefit	TP	Temporary Possession
MHWS	Mean High Water Springs	WQ3	ExA's third written questions and request for information
MIMP	MEEB implementation and monitoring plan		

Examination Library

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the [Examination Library](#). The Examination Library will be updated regularly as the Examination progresses.



Index

DC1.1. General and cross-cutting	4
DC1.1.1 General and cross-cutting	4
DC1.1.2 Content	4
DC1.2. PART 1 Preliminary	5
DC1.2.1 Article 2 Interpretation	5
DC1.3. PART 2 Principal powers	6
DC1.3.1 Article 5 Benefit of Order	6
DC1.3.2 Article 6 Disapplication and modification of legislative provisions	7
DC1.4. PART 4 Principal powers	7
DC1.4.1 Article 16 Authority to survey and investigate land	7
DC1.5. PART 5 Powers of acquisition.....	7
DC1.5.1 Article 26 Temporary use of land for maintaining the authorised project.....	7
DC1.6. SCHEDULE 2 PART 1 – Requirements	8
DC1.6.1 Requirement 1 Time limits	8
DC1.6.2 Requirements 2 – 7 Detailed offshore design parameters	8
DC1.6.3 Requirement 10 Detailed design parameters onshore.....	8
DC1.6.4 Requirement 11 Provision of landscaping	9
DC1.6.5 Requirement 13 Ecological management plan	10
DC1.6.6 Requirement 14 Fencing and other means of enclosure.....	10
DC1.6.7 Requirement 27 Ministry of Defence surveillance operations.. Error! Bookmark not defined.	
DC1.6.8 Requirement 28 Cromer and Claxby Primary Surveillance Radar	Error! Bookmark not defined.

DC1.7. SCHEDULE 9 – Land of which temporary possession only may be taken.....	10
DC1.7.1 SCHEDULE 9 – Land of which temporary possession only may be taken	11
DC1.8. SCHEDULES 10-13 Marine Licenses 1 to 4	11
DC1.8.1 Condition 20.....	11
DC1.8.2 Activities Authorised under the DMLs.....	11
DC1.8.3 New Schedule for MEEB implementation	11

Deadline for responses is Deadline 5, Tuesday 13 June 2023

DC1.1. General and cross-cutting		
DC1.1.1 General and cross-cutting		
DC1.1.1.1	Applicant	<p>Format of Providing the Explanatory Memorandum with Track Changes</p> <p>Provide the track change version of the EM that shows all the changes made since the submissions of the application.</p>
DC1.1.2 Content		
DC1.1.2.1	Applicant	<p>Applicant’s Confirmation of Final Review at the final Examination Deadline</p> <p>a) Check internal references, statutory citations and references and legal footnotes and update as required.</p> <p>b) Review additions to the dDCO ensuring that the titles and numbering of all provisions remains consistent throughout and with the Table of Contents.</p> <p>c) Confirm and demonstrate, that the proposed dDCO follows best practice in Planning Inspectorate Advice Notes 13 and 15 and (as relevant) guidance on statutory instrument drafting from the Office of the Parliamentary Counsel (June 2020). In addition to your previous response you may provide a table of compliance [REP1-036, Q1.11.1.1].</p>
DC1.1.2.2	Applicant	<p>Table of contents</p> <p>ExA proposes correcting the Schedule numbering for Documents to be certified. This should be Schedule 18 and is currently identified as Schedule 1.</p>
DC1.1.2.3	Applicant Discharging Authorities	<p>Discharging Requirements and Conditions</p> <p>At this stage, the ExA proposes no further amendments with the discharging authorities in the dDCO [REP1-036, Q1 1.11.1.3, Appendix B.8] [REP2-040], subject to further comments if any, from discharging authorities, in particular NCC.</p>

DC1.2. PART 1 Preliminary		
DC1.2.1 Article 2 Interpretation		
DC1.2.1.1	Applicant National Highways	<p>Pre-commencement works</p> <p>ExA notes the proposed amendments to the definition of “commence”, the addition to the definition of “pre-commencement”, the corresponding amendments to R13, R18 and R20(4), the addition of new R33 Contaminated land and groundwater scheme, and corresponding explanation [REP1-102] [REP1-078] [REP1-036] [REP3-103, Q2.11.2.2, Appendix B.10] [REP4-045] [REP4-027].</p> <p>a) In this regard, the ExA proposes, the addition of an explanation of “pre-commencement” to the EM, Paragraph 36, including a summary of the explanation provided by the Applicant [REP3-103, Q2.11.2.2, Appendix B.10].</p> <p>b) The ExA is awaiting resolution of discussion with NH on any further amendments to R19, in addition to Protective Provision, if deemed necessary by NH and Applicant [REP3-138] [REP4-028].</p>
DC1.2.1.2	Applicant	<p>HDD Works at Night and Emergency Works</p> <p>The Applicant has set out [REP3-101, Q2.20.4.2] that other than trenchless crossings under the A11 (RDX048), the Cambridge to Norwich Railway (RLX002) and the crossing of the North Norfolk Railway line (RLX001) HDD works would not be undertaken at night other than in an emergency. The Applicant has set out examples of emergencies for HDD works [REP3-101, Q2.20.4.2]. However, what constitutes an emergency in terms of HDD is not defined in the dDCO.</p> <p>a) The ExA is of the view that the three crossings identified above should be set out in R21 (2)(d) of the dDCO, so it is clear that such works are limited to these crossings. Applicant, provide suitable wording.</p> <p>b) The ExA considers a definition of emergency HDD works or emergency works is needed. Applicant, provide suitable wording.</p> <p>c) Consequently, the drafting in the dDCO should clarify the restrictions around emergency works in R21. Applicant, provide suitable drafting amendments.</p> <p>d) Justify why labour issues should be considered an emergency.</p> <p>e) Provide corresponding explanation in the EM.</p>

Deadline for responses is Deadline 5, Tuesday 13 June 2023

		See related question in ExA’s WQ3, Noise and Vibration.
DC1.2.1.3	Applicant	<p>Definition of scenario 1</p> <p>a) Given there could be an overlap between the onshore and offshore construction programme in scenario 1c and 1d, the ExA finds the word “separately” in the definition of scenario 1 to be mis-leading. In that regard, the ExA proposes deleting the word “separately” from the definition in Article 2, and all instances where scenario 1 has been defined.</p> <p>b) Additionally, the ExA finds that the definition of scenario 1 should clarify in Article 2 and other instances in the dDCO and the EM that the coordination (or lack thereof) between the construction of the two projects would be in accordance with relevant provisions, management plans and the Scenario Statement.</p> <p>c) The ExA also proposes that the Scenario Statement should be either a certified document or included in the ES. Applicant, provide suitable amendments to Schedule 18 and EM.</p> <p>d) Propose any further related drafting amendments.</p>
DC1.3. PART 2 Principal powers		
DC1.3.1 Article 5 Benefit of Order		
DC1.3.1.1	Applicant Marine Management Organisation	<p>The role of MMO</p> <p>The ExA notes the amendments proposed by the Applicant to Article 5, particularly sub-paragraphs 2, 6 and the addition of sub-paragraph 3, to ensure that MMO is consulted by the SoS should the SoS consider a transfer of benefit of a DML, and only the whole of the DML could be transferred, not allowing a transfer of part of a DML. The ExA finds it reasonable that where a transfer of a DML would be proposed, the SoS would be required to look at the proposed transfer in the context of all the provisions of the dDCO, including some Articles and Requirements relating to offshore matters which overlap with the DMLs. In that context, the ExA finds it is reasonable that the SoS would have the ability to approve the transfer of a dDML, in consultation with MMO [RR-053] [REP1-036, Q1.11.3.2] [REP3-112] [REP3-133] [REP4-028] [REP4-037] [REP4-048]. However, the ExA proposes the following edits:</p> <p>a) Applicant, provide edits to Article 5 (or signpost if already included) to ensure that the provision only provides for the transfer of the benefit of the dDML and not a lease.</p>

Deadline for responses is Deadline 5, Tuesday 13 June 2023

		<p>b) Applicant, provide corresponding justification and any other relevant updates in the EM.</p> <p>c) MMO, provide further justification if you find that the provision in Article 5(6) would not enable you to ensure compliance with the provisions of the MACAA2009, when responding to the SoS.</p>
DC1.3.2 Article 6 Disapplication and modification of legislative provisions		
DC1.3.2.1	Applicant Environment Agency	<p>Update</p> <p>a) Is there an agreement regarding the disapplication of the relevant legislation or provide an update [REP1-111] [REP2-040, Q1.11.3.3]?</p> <p>b) In Paragraph 53 of the EM, is the reference to Articles 29 and 30 correct or should this refer to Articles 26 and 27?</p> <p>c) The ExA notes that the Applicant is proposing to disapply the provisions relating to TP in the NPA2017, as these were legislated in 2017 but are still not commenced. Can you confirm that the implications of a currently unforeseen commencement of those provisions has been considered and can be managed? What would be the effect on the Proposed Development?'</p>
DC1.4. PART 4 Principal powers		
DC1.4.1 Article 16 Authority to survey and investigate land		
DC1.4.1.1	Applicant	<p>Article 16 Authority to survey and investigate land</p> <p>The ExA notes the Applicant's explanation [REP3-101] and welcomes the proposed addition of sub-paragraph 2 [REP1-036]. Additionally, the ExA proposes the following amendment to include the word "land" to notionally further limit the provision of this Article to "land" affected by the authorised project and not "any land":</p> <p><i>"16.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits or land which may be affected by the authorised project and—"</i></p>
DC1.5. PART 5 Powers of acquisition		
DC1.5.1 Article 26 Temporary use of land for maintaining the authorised project		

Deadline for responses is Deadline 5, Tuesday 13 June 2023

DC1.5.1.1	Applicant	<p>Time-limit</p> <p>a) The ExA is aware that the drafting to Article 26(3) and 27(4) follow precedented format. However, in line with the concerns raised relating to effects of TP on business, the ExA considers that a time limit in Article 27(4) should be included to protect the distinction between TP and CA, and reinforce the temporariness of TP provisions in the dDCO.</p> <p>b) Applicant, explain with reasons the implications of including such a time limit.</p> <p>c) Is there any precedence at all, of including a time limit on the temporary use of land for maintaining a Proposed Development in made DCOs?</p> <p>d) Provide suitable wording.</p> <p>See related question in ExA’s WQ3, Compulsory Acquisition and Temporary Possession.</p>
DC1.6. SCHEDULE 2 PART 1 – Requirements		
DC1.6.1 Requirement 1 Time limits		
DC1.6.1.1	Applicant	<p>Assumptions on Working Crews</p> <p>The ExA is unconvinced with the Applicant’s explanation [EV-057] [EV-061] [REP3-101, Q2.6.1.4] and remains concerned that the adverse effect of construction works that would be undertaken on the same section(s) of the cable corridor by separate crews, constructing SEP and DEP projects under scenarios 1c and 1d, has not been assessed in the ES. On this basis, the ExA proposes an additional paragraph to R1 that secures a restriction that working crews cannot work on the same or adjacent section(s) of onshore cable corridor when they are being constructed under scenarios 1c and 1d. Applicant, provide suitable wording, corresponding explanation in the EM, and any corresponding changes to the ES.</p>
DC1.6.2 Requirements 2 – 7 Detailed offshore design parameters		
DC1.6.2.1	Applicant	<p>Check figures</p> <p>Check if the figures – 4045, 4054, 7297 – are correct in R6(3) to (6).</p>
DC1.6.3 Requirement 10 Detailed design parameters onshore		
DC1.6.3.1	Applicant	Design Review

Deadline for responses is Deadline 5, Tuesday 13 June 2023

		<p>a) In order to secure a rigorous design process which includes detailed consideration of the design of permanent fencing and screens, the ExA proposes the following amendments to R10(5):</p> <p><i>"(5) The details submitted under sub-paragraphs (1), (2) or (3) and under Requirement 14 must:"</i></p> <p>b) ExA proposes the following amendments to R10(5)(b), in order to avoid potential confusion over the provision for independent design review in line with NPS-EN1, and to ensure that the relevant planning authority is fully engaged in the independent design review process:</p> <p><i>"(b) if requested by the relevant planning authority, have been subject to an early independent design review to a design review process carried out by an independent design review panel to the satisfaction of the relevant planning authority and which must consider whether sub-paragraph (a) has been satisfied and make recommendations for design improvements if not."</i></p> <p>c) Consider if the drafting of R10 (1) to (3) and R10(5)(b) makes provision for iterative design improvements or changes, made during the entirety of the design process to be in accordance with those approved by the relevant planning authority and for the undertaker to take account of such design improvements or changes.</p> <p>d) Set out how the DAS would be updated following a design review process and how such updates would be secured. Explain with reasons or provide suitable alternative wording.</p> <p>e) Justify the need for R10(4), given R10(5) secures the DAS and explain if there is potential for duplication, potentially preventing the undertaker from considering the DAS as a whole</p> <p>f) Set out how R10(4) and (5) relate to each other when taking into account the design review process secured through R10(5)(b) and the subsequent recommendations for design improvements.</p>
<p>DC1.6.4 Requirement 11 Provision of landscaping</p>		
<p>DC1.6.4.1</p>	<p>Applicant</p>	<p>Details of Existing Trees and Hedges</p>

Deadline for responses is Deadline 5, Tuesday 13 June 2023

		<p>In order to ensure that details of existing trees and hedges to be removed and details of existing trees and hedges to be retained, with measures for their protection during the construction period are fully in accordance with BS5837:2012, the ExA recommends the following amendments to R11(2)(e):</p> <p><i>"(e) details of existing trees and hedges to be removed and details of existing trees and hedges to be retained, with measures for their protection during the construction period where applicable and the details provided should be in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction and the Hedgerow Regulations 1997; and"</i></p>
DC1.6.5 Requirement 13 Ecological management plan		
DC1.6.5.1	Applicant	<p>Numbering</p> <p>Check the Requirement numbering, and if sub-paragraphs (3) and (4) have been incorrectly numbered.</p>
DC1.6.6 Requirement 14 Fencing and other means of enclosure		
DC1.6.6.1	Applicant	<p>Means of Enclosure for the Lifetime of the Proposed Development</p> <p>a) In order to clarify the extent of information required for approval could include written information as well as plans and drawings, and in order to maintain consistency with other Requirements, the ExA proposes the removal of the word "written" in Requirement 14(1).</p> <p>b) In order to ensure that fencing, screening, walls and other means of enclosure are provided and maintained for the lifetime of the Proposed Development, the ExA proposes the following changes to R14(3):</p> <p><i>"(3) Permanent fencing, walls and other means of enclosure approved under sub-paragraph (1) and (2) must be provided and maintained in accordance with the details approved under this requirement until the onshore works to which they relate are decommissioned in accordance with the onshore decommissioning plan approved under requirement 29 (onshore decommissioning)."</i></p>
DC1.7. SCHEDULE 9 – Land of which temporary possession only may be taken		

Deadline for responses is Deadline 5, Tuesday 13 June 2023

DC1.7.1 SCHEDULE 9 – Land of which temporary possession only may be taken		
DC1.7.1.1	Applicant	<p>Title</p> <p>Consider if the title should be: <i>"SCHEDULE 9 – Land of which only temporary possession only may be taken"</i></p>
DC1.8. SCHEDULES 10-13 Marine Licenses 1 to 4		
DC1.8.1 Condition 20		
DC1.8.1.1	Applicant	<p>Post-construction monitoring of the MCZ</p> <p>Condition 20 across all DMLs refers to the Offshore In-Principle Monitoring Plan. NE [REP3-146] highlight that the list under subsection (3) lists various post-construction monitoring elements, but this does not include the post-construction monitoring of the MCZ is not listed. While the ExA acknowledges that the post-construction monitoring MCZ is covered in the Offshore In-Principle Monitoring Plan [REP4-014], this should also be included in sub-section (3). Provide suitable wording.</p>
DC1.8.2 Activities Authorised under the DMLs		
DC1.8.2.1	Applicant Marine Management Organisation	<p>Activities Authorised under the DMLs</p> <p>The Marine Management Organisation continue to raise objection to the use of the phrase "materially" within the context of the DMLs [REP2-059, Paragraph 8.9] [REP4-037]. While the ExA awaits further discussion on this matter and resolution on this issue, the following alternative suggestions are proposed. Applicant and MMO to comment:</p> <ol style="list-style-type: none"> a) Consider a fuller explanation in the EM which sets out that the undertaker would be restricted to carrying out works that do not give rise to any new or different environmental effects to those assessed in the EIA; or b) Consider and adding a provision in the dDML to restrict activities that do not give rise to any new or different environmental effects to those assessed in the EIA.
DC1.8.3 New Schedule for MEEB implementation		
DC1.8.3.1	Applicant	Potential Part 4 of Schedule 17 regarding MEEB implementation

Deadline for responses is Deadline 5, Tuesday 13 June 2023

	Marine Management Organisation Natural England	<p>Part 4 of the without prejudice DCO wording [REP2-011] provided by the Applicant, sets out that there should be no external cable protection works within the MCZ until the MIMP has been agreed by the SoS.</p> <p>a) NE, do you consider that further works would need to be prevented within or adjacent to the MCZ until the MIMP has been agreed?</p> <p>b) NE, are you content with the timings stated within the draft wording of Part 4, or should additional clauses requiring an implementation timetable be considered, including reference to when the MIMP would be necessary?</p>
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