

via e-mail

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Your Ref: SEP DEP Draft PP
Date: 17 July 2023

My Ref: FW2023_0675
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CC: Stephen Faulkner, Norfolk County Council Principal Planner

Dear Sheery,

Sheringham and Dudgeon Windfarm Extension Projects – LLFA Review of Requirements 17 and 19 and Protective Provisions

Thank you for your consultation on the above site, received on 14 July 2023. We have reviewed the draft requirements. The LLFA has had an opportunity to review the draft Requirements 17 (Operational Drainage Strategy) and 19 (Code of Construction Practice) from the draft Development Consent Order (Revision J) and does not have any further comment at this time.

We have also discussed with the Yvonne Smith at the Water Level Management Alliance (WLMA) as the LLFA and the WLMA are proposed to have a shared set of protective provisions. We have taken legal advice from our representatives and they are satisfied with amendments proposed.

The LLFA has reached an agreed set of protective provisions with the Applicant, a copy of which is attached for reference. It is our understanding these have been incorporated into the draft DCO at Deadline 8. On this basis, the LLFA confirms our acceptance of the protective provisions and disapplication of certain Land Drainage Act 1991 provisions included in Article 6 of the draft DCO.

Yours sincerely,

Sarah

Sarah Luff
Strategic Flood Risk Planning Officer

Lead Local Flood Authority

Disclaimer

We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue.

PART 1

For the protection of the drainage authorities

1. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

2. In this Part of this Schedule—

“the Board” means Norfolk Rivers Internal Drainage Board;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation; and

“construct” and “constructed” must be construed accordingly;

“drainage authority” means—

(a) in relation to an ordinary watercourse in an internal drainage district, the Board;

(b) in relation to an ordinary watercourse in an area outside an internal drainage district, the lead local flood authority.

“drainage work” means any watercourse and includes any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“evidence” includes hydraulic modelling, infiltration test results and geotechnical evaluations;

“internal drainage district” has the meaning given in the Land Drainage Act 1991(1);

“lead local flood authority” means Norfolk County Council in accordance with the Flood and Water Management Act 2010;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to—

(c) affect any drainage work;

(d) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work;

(e) affect the flow of water in any drainage work or other surface waters or ground water;

(f) affect the conservation, distribution or use of water resources;

“watercourse” has the meaning given in the Land Drainage Act 1991 and for the avoidance of doubt includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer; and

“working day” means any day which is not Saturday, Sunday, a bank holiday or other public holiday in England.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the relevant drainage authority plans of the specified work, evidence to support said plans and any such further particulars available to it as the relevant drainage authority may within 28 working days of the submission of the plans reasonably require.

(2) At least 30 days prior submission of information pursuant to paragraph 3(1), the undertaker must submit relevant plans and evidence to support said plans to the relevant drainage authority and engage in pre-submission discussions in relation to those.

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the relevant drainage authority, or determined under sub-paragraph (3).

(1) 1991 c. 59. Section 23 was amended by paragraph 192 of Schedule 22 to, the Environment Act 1995 c. 25, and by paragraph 32 of Schedule 2 to, the Flood and Water Management Act 2010 c. 29.

- (4) Any approval of the relevant drainage authority required under this paragraph—
- (a) must not be unreasonably withheld or delayed;
 - (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval or submission of further particulars (where required by the relevant drainage authority under sub-paragraph (1)) whichever is the later; and
 - (c) may be given subject to such reasonable requirements and conditions as the relevant drainage authority may consider appropriate.

(5) The relevant drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(6) Any refusal under this paragraph must be accompanied by a statement of the grounds of refusal.

4. Without limiting paragraph 3, the requirements which the relevant drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of any specified work.

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the relevant drainage authority under paragraph 4 must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the relevant drainage authority and an officer of the relevant drainage authority is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the relevant drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the completion of construction.

(3) If the relevant drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of the specified work.

(4) If any part of a specified work or any protective work required by the relevant drainage authority is constructed otherwise than in accordance with the requirements of this Part, the relevant drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the relevant drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to the reasonable satisfaction of the relevant drainage authority to such extent and within such limits as the relevant drainage authority may reasonably require.

(5) Subject to sub-paragraph (6) and paragraph 10 if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice or subsequently made reasonably expeditious progress towards their implementation, the relevant drainage authority may execute the works specified in the notice and any expenditure reasonably incurred by the relevant drainage authority in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the relevant drainage authority must not except in the case of an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 12.

6.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified work maintain in good repair and condition and free from obstruction any drainage work which

is situated within the Order limits and on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the relevant drainage authority, the relevant drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the relevant drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the relevant drainage authority reasonably requires.

(3) Subject to sub-paragraph (5) if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the relevant drainage authority may do what is necessary for such compliance and may, subject to paragraph 10, recover any expenditure reasonably incurred by the relevant drainage authority in so doing from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the relevant drainage authority in accordance with this Part of this Schedule the relevant drainage authority may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph **Error! Reference source not found.**, the relevant drainage authority must not except in the case of an emergency exercise the powers conferred by sub-paragraph **Error! Reference source not found.** until the dispute has been finally determined in accordance with paragraph 12.

(6) This paragraph 6 does not apply to:

- (a) drainage works which are vested in the relevant drainage authority or which the relevant drainage authority or another person is liable to maintain and is not proscribed by the powers of the Order from doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

7. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the relevant drainage authority and, if the undertaker fails to do so, the relevant drainage authority may make good the impairment or damage and recover expenditure from the undertaker the expense reasonably incurred by it in doing so.

8. If by reason of construction of the specified work the relevant drainage authority access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the relevant drainage authority to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

9.—(1) The undertaker must indemnify and compensate the relevant drainage authority in respect of all costs, charges and expenses, the relevant drainage authority may reasonably incur by reason of—

- (a) the review, examination or approval of plans and supporting evidence under this Part;
- (b) the inspection of the proposed site for construction and construction of the specified work or any protective works required by the relevant drainage authority under this Part; and
- (c) the carrying out of any surveys or tests by the relevant drainage authority which are reasonably required in connection with the construction of the specified works.

(2) Any demands made by a drainage authority in respect of costs, charges and expenses sub-paragraph (1) must be accompanied by evidence.

10.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify and compensate the relevant drainage authority in respect of all reasonable claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the relevant drainage authority by reason of—

- (a) the construction, operation or maintenance of any specified works or the failure of any such works comprised within them;
- (b) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged on upon the construction, operation or maintenance of the specified works or dealing with any failure of the specified works; and
- (d) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses; or
- (e) any flooding or increased flooding of any such land.

(2) The relevant drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise can be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(3) The fact that any work or thing may have been done by the undertaker in accordance with a plan approved or deemed approved by the relevant drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

11. Any dispute arising between the undertaker and the relevant drainage authority under this Part, if the parties agree, must be determined by arbitration under article 43 (arbitration) but otherwise must be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Business, Energy and Industrial Strategy or its successor acting jointly on a reference to them by the undertaker or the relevant drainage authority, after notice in writing by one to the other.