

PLANNING ACT 2008

DEVELOPMENT CONSENT ORDER – AWEL Y MOR OFFSHORE WINDFARM

EXAMINING AUTHORITY’S WRITTEN QUESTIONS AND REQUESTS FOR INFORMATION (EXQ1)

SUBMISSIONS ON BEHALF OF RHYL FLATS WIND FARM LIMITED (“RFWFL”)

Question Number	Question	Response
0.19	<p>Other Projects and Proposals Are there any other projects that are not documented in the ES that are relevant and need to be considered by the ExA? If so, please identify these projects and the public information source(s) from which you have made your assessment that they are relevant</p>	<p>RFWFL is not aware of other projects which require to be assessed. However, RFWFL would point out that paragraph 2.6.179 of EN-3 requires that “Where a potential offshore wind farm is proposed close to existing operational offshore infrastructure, or has the potential to affect activities for which a licence has been issued by Government, the applicant should undertake an assessment of the potential effect of the proposed development on such existing or permitted infrastructure or activities.”</p> <p>Although Chapter 12 of the environmental assessment prepared for the application [APP-058] considers the impacts of the on other marine users and activities - including existing offshore wind farms – this assessment does not extend to assessment of wake loss impacts on RF. Nor does the ES explain why this has been scoped out. There is no material before the examination which assesses the potential impact of the proposed development on the energy yield of RF.</p>
3.26	<p>Several Statutory Undertakers with offshore land and equipment interests (not included the BoR) have submitted a RR ([RR-018], [RR-019] and [RR-020]). The Applicant: a) Provide a progress report on negotiations with each of these Statutory Undertakers, with an estimate of the timescale for securing agreement with them; b) Indicate whether there are any envisaged impediments to the securing of such agreements; and</p>	<p>The Applicant has provided draft protective provisions for the benefit of RFWFL. RFWFL’s proposed revisals to the protective provisions are attached as Appendix 1 and have been submitted to the Applicant. The key required changes are:-</p> <p>a) A mechanism is required for RF to approve the details of how works are to be carried out (including timing) out as well as details of the works themselves. This is necessary to ensure that the works are carried out in accordance with good practice and that the method and timing of the works do not prejudice the operation of RFWFL or any works which may be planned to RFWFL.</p>

	<p>c) State whether any additional Statutory Undertakers with offshore interests have been identified since the submission of the application.</p> <p>Statutory Undertakers: Where Statutory Undertakers [RR-018, RR-019 and RR-020] have concerns regarding the current drafting of the Protective Provision within [AS-014], either provide copies of preferred wording or if you have provided it, signpost where it can be found and explain why you do not consider the wording as currently drafted to be appropriate.</p>	<p>b) The protective provisions need to make provision for RF to have representatives present when the work is carried out to ensure that work is carried out in accordance with the approved details.</p> <p>c) Provision is required for the Applicant to reimburse the reasonable expenses incurred by RFWFL as a result of the works carried out by the Applicant. The principle of this point is established in the draft produced by the Applicant but further detail is required.</p> <p>d) An indemnity is required in relation to any damage or loss caused to the RFWFL as a result of the Applicant's works, including where there is any interruption or reduction in any electricity generated by RF. The Applicant has included such wording in the DCO for various onshore electricity undertakers and similar provision is required in relation to RFWFL</p> <p>e) there is currently a dispute between the parties on wake loss. RFWFL is seeking further discussion with the Applicant to establish whether this is a matter which is capable of being resolved between the parties. Provision for wake loss has therefore not currently been made in the draft protective provisions. However, in the event that satisfactory progress is not made then RFWFL would intent to provide additional protective provision to address wake loss at Deadline 2.</p>

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WINDFARM
EXAMINING AUTHORITY’S WRITTEN QUESTIONS AND REQUESTS
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(“RFWFL”)
APPENDIX A – REVISALS TO DRAFT PROTECTIVE PROVISIONS

Drafting Notes

1. Track changes are revisals by RFWFL to the draft produced by the Applicant.
2. There is currently no provision in relation to wake loss. RFWFL seeks further discussion with the Applicant on this matter. In the event that satisfactory progress is not made then RFWFL would intend to lodge additional protective provisions at Deadline 2 on wake loss.

For the Protection of Rhyl Flats Wind Farm Limited

Application

1. The provisions of this Part apply for the protection of the Company unless otherwise agreed in writing between the undertaker and the Company.

Interpretation

~~1.2.~~ In this Part—

“apparatus” means the cables, [anchors, moorings, vessels, stabilisation systems](#), structures or other infrastructure owned, occupied or maintained by the Company or its successor in title within the Rhyl Flats Lease Area;

“Company” means Rhyl Flats Wind Farm Limited (company number 05485961) whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB;

“construction” includes execution, placing and relaying and “construct” and “constructed” must be construed accordingly;

“method statement” means a [written statement setting out the methodology for implementation of the specified works including—](#)

[\(a\) construction methods and programmes](#)

[\(b\) vessel handling and positioning systems;](#)

[\(c\) trenching/cable burial details;](#)

[\(d\) scour protection and mattress laying](#)

[\(e\) securing access by the Company to apparatus throughout the duration of the specified works;](#)

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(e) such further particulars available to it that the Company may reasonably require;

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“plans” includes sections, drawings, calculations, ~~methods of construction, programmes, particulars and specifications~~ and details of the specified works including the extent, timing and duration of any proposed occupation of the Rhyl Flats Restriction Zone;

“Rhyl Flats Restriction Zone” means the 250m restriction zone around the perimeter of the Rhyl Flats Lease Area;

“Rhyl Flats Lease Area” means the land leased by the Crown Estate Commissioners to the Company for the operation of the Rhyl Flats Offshore Wind Farm;

“Rhyl Flats Offshore Wind Farm” means the offshore wind farm operated by the Company within the Rhyl Flats Lease Area;

“specified works” means works for the construction, maintenance or replacement of so much of Work No. 2 as is within 250 metres of the perimeter of the Rhyl Flats Lease Area, including survey worksany apparatus;

Consent for specified works

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~~2.3.~~ Where conditions are included in any consent granted by the Company pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by the Company.

~~3.4.~~—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of the Company, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions (including in relation to timing of the specified works) and if the Company does not respond within ~~5628~~ days then consent is deemed to be given.

(2) Any application for ~~Subject to obtaining~~ consent pursuant to sub-paragraph (1) must be accompanied by—

(a) ~~and before beginning to construct any specified works, the undertaker must submit~~ plans of the specified works;

(b) a method statement;

~~(2)(c)~~ _____ to the Company and must submit such further particulars available to it that the Company may reasonably require.

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(3) Any approval of the Company required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus or for securing access to any apparatus;

(4) Where the Company requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the Company’s reasonable satisfaction.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than ~~2856~~ days before commencing the execution of any specified works, new plans or a revised method statement instead of the plans or method statement previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans or method statement.

~~(5)(6).~~ The specified works shall be carried out in accordance with the consent given, or deemed to be given, in terms of sub-paragraph (1).

~~4.5.~~—(1) The undertaker must give to the Company not less than 28 days’ written notice of its intention to commence the undertakingconstruction of the specified works and, not more than 14 days after completion of their implementationconstruction, must give the Company written notice of the completion.

(2) The undertaker is not required to comply with paragraph 4 or sub-paragraph (1) in a case of emergency, but in that case it must give to the Company notice as soon as is reasonably practicable and a plan, sections and description of those works as soon as reasonable practicable

subsequently and must comply with paragraph 4 in so far as is reasonably practicable in the circumstances.

(3) The Company shall be entitled to have not more than two representatives present while any specified works are being carried out by the undertaker and the following provisions shall apply to such representatives—

- (a) Any representatives must be suitably qualified and must comply with the Marine Labour Convention 2006 Regulations;
- (b) The representatives may be located on any vessel carrying out specified works and shall have full and free access at all times to all activities related to the specified works;
- (c) The undertaker shall afford the representatives its full cooperation in the execution of the representative's duties; and
- (d) The representatives only function is to safeguard the interests of the undertaker and they shall have no duty to ensure or procure the doing of anything for the benefit of the undertaker or to prevent anything which may be to the detriment of the undertaker, provided however that the representatives shall act in good faith at all times.

5.—6(1) The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by the Company to any apparatus unless agreed with the Company and in accordance with any conditions which may be required by the Company or where required by law or for health and safety reasons.

6.(2) The undertaker must give to the Company not less than 28 days' written notice of its intention to exercise powers which will prevent or interfere with the access by the Company to any apparatus.

6. 7 To ensure its compliance with this Part, the undertaker must before carrying out any specified works and at the undertaker's own cost, carry out all surveys reasonably necessary to confirm the actual position of apparatus unless otherwise agreed with the Company in writing, such agreement not to be unreasonably withheld or delayed. The Company shall provide on request any reasonable assistance required up-to-date written confirmation from the Company of the location of any apparatus.

8 The undertaker and the Company must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

Expenses

9—(1) The undertaker must pay to the Company on demand the all reasonable charges, costs and expenses incurred by the Company in direct consequence of any authorised development including without limitation in respect of—

- (a) the connection with the approval of plans and method statements;
- (b) the carrying out of protective works (including any temporary protective works and their removal);
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (d) Any additional costs incurred in the decommissioning of Rhyl Flats Offshore Wind Farm as a result of the specified works.

Indemnity

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10—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of these works), any damage is caused to any apparatus or property of the Company, or there is any interruption or reduction in any electricity generated by the Company, or the Company becomes liable to pay any amount to any third party, the undertaker will—

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(a) bear and pay on demand accompanied by an invoice or claim from the Company the cost reasonably and properly incurred by the Company in making good such damage or restoring the supply; and

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(a)–(b) indemnify the Company for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the Company, by reason or in consequence of any such damage, interruption or reduction or the Company becoming liable to any third party as aforesaid other than arising from any default by the Company.

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(2)–The fact that any act or thing may have been done by the Company on behalf of the undertaker or in accordance with a plan or method statement approved by the Company or in accordance with any requirement of the Company as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and the Company).

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(2) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of–

(a) any damage or interruption to the extent that it is attributable to the neglect or default of the Company, its officers, employees, contractors or agents;

(b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(3) The Company must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representation.

Arbitration

7. 11 Any dispute arising between the undertaker and the Company under this Part must be determined by arbitration under article [44] (arbitration).

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