



Awel y Môr Offshore Wind Farm

Applicant's Response to ISH1 dDCO Actions

Deadline 1

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1 Applicant's Response to ISH1 dDCO Actions

Table 1: Table of actions and Applicant's responses.

DIRECTED TO	ACTION	APPLICANT'S RESPONSE
Applicant	The Applicant is to review and expand on the definition of 'commence' for the next submission of the draft DCO (Part 1, Article 2, [AS-014])	<p>The definition of 'commence' in Article 2 has been amended in the dDCO (see Document 1.8 of the Applicant's Deadline 1 submission). The amended definition reflects the detail set out in the ES and has followed the approach of the Norfolk Vanguard Offshore Wind Farm Order 2022. The amended definition is:</p> <p><i>"commence" means carry out a material operation, as defined in section 155 of the 2008 Act comprised in or for the purposes of the authorised development other than onshore works comprising surveying or investigatory works including archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions; preparatory works to existing infrastructure and diversion and laying of utilities and services;</i></p>

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		<p><i>creation of any temporary means of access; site clearance including vegetation clearance; erection of means of enclosure, creation of temporary hard standing, or the temporary display of site notices or advertisements, and "commencement", "commenced" and cognate expressions are to be construed accordingly"</i></p>
Applicant	<p>The Applicant is to provide a definition of 'an operation of a prescribed description' in the context of the proposed development (s155 Planning Act 2008).</p>	<p>Section 155(2) of the Planning Act 2008 provides that "Material operation" means "any operation except an operation of a prescribed description". An "operation of a prescribed description" must be listed in regulations made under the 2008 Act (per section 253). The relevant regulations prescribing activities are the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, regulation 7 of which provides, in its entirety: "The measuring or marking out of a proposed road shall not be included within the meaning of "material</p>

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		<p>operation" for the purposes of section 155 (when development begins) of the Act". The Applicant does not consider that this exclusion is relevant to the 'site preparation works' identified for AyM as it is not intended to include the marking out of a proposed road (which is clarified by the amended detail of 'commence' included in the revised dDCO (see Document 1.8 of the Applicant's Deadline 1 submission).</p>
Applicant	<p>The Applicant is to review consistency in respect of the use of the terms of "pre commencement" and "preliminary". To amend terminology if necessary.</p>	<p>The use of these terms in the dDCO has been reviewed, no inconsistency was found in the dDCO but the Explanatory Memorandum has been amended to correct for any inconsistencies.</p>
Applicant	<p>The Applicant is to investigate and provide justification for inclusion in 'Ancillary works' of intrusive ground investigations including the making or boreholes and trial pits (Schedule 1, Part 2, subsection (a)[AS-014]).</p>	<p>The Applicant considers that these items are appropriately identified as ancillary works in the dDCO as they are typically works that do not constitute development and as these activities will be required across the order limits they cannot be allocated to specific work numbers.</p>

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Applicant	The Applicant is to review the content of the list contained within Article 40 [AS-014].	As confirmed in ISH1, the Applicant has reviewed the content of the list contained within Article 40 and this has been amended in the revised dDCO (see Document 1.8 of the Applicant's Deadline 1 submission) to remove the outline plans that will only be secured by the marine licence. Article 40 list of document is now set out in Schedule 13 (documents to be certified).
Applicant	The ExA suggested that the Applicant reviews the Norfolk Boreas and East Anglia DCOs in respect of Article 43 [AS-014].	Article 39 of the Norfolk Boreas DCO applies the procedure for discharge of requirements to all consents required from the "relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain, or any other relevant discharging authority". As regards the relevant planning authority, this is the same in substance as the approach taken by the AyM dDCO. The Applicant has not sought to apply that process to decisions to be made or consents to be given by street authorities or owners of

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		<p>drains and sewers as the principle of time limits for making such decisions, and providing that such decisions may not be unreasonably withheld, is already provided for in the drafting of the relevant articles. The Norfolk Boreas drafting is also limited to points in the nature of requirements discharge, which does leave a gap where the Applicant would be left with no route of appeal for a failure to make other decisions. Article 38 of the East Anglia One North DCO (2022) specifically only addresses matters under requirements and is accordingly even more limited than Norfolk Boreas. The Applicant therefore maintains that the Hornsea precedent relied on for the AyM drafting is more appropriate.</p>
Applicant	<p>The Applicant is to review the existing parameters tables and provide greater clarity (Schedule 2, Requirement 2 Table 3 & Requirement 7 Table 4 [AS-014]).</p>	<p>The Applicant does not consider that the use of the maximum parameters set out in Table 3 of the dDCO would allow for the maximum parameters of each scenario to be constructed, as this is controlled by the</p>

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		<p>maximum total rotor swept area for the turbines of 2,500,412 m². The rotor swept area increases with the height and rotor diameter of the turbine, meaning that it would not be possible to meet this restriction with the greatest number of largest turbines. See also response to ExAQ1 6.23.</p> <p>Amendments to table 4 and wording added into R7 (see Document 1.8 of the Applicant's Deadline 1 submission) have been made so that it is clear what the maximum parameters would be in the event an air insulated switchgear or gas insulated switchgear substation is constructed.</p>
Applicant	The Applicant is to review details of offshore decommissioning, including potential decommissioning at landfall and a copy of BEIS guidance referred to is to be provided (Requirement 20 [AS-014])	The Applicant has reviewed details of offshore decommissioning, including potential decommissioning at landfall. Please see responses to ExQ1 6.40, 6.41 and 6.42. A link to the BEIS guidance is here: Decommissioning of offshore renewable energy installations under

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		<p><u>the Energy Act 2004: guidance notes for industry (publishing.service.gov.uk)</u></p>
Applicant	<p>The Applicant is to review and confirm their position in respect of the specific onshore decommissioning and need or otherwise to provide further details (Requirement 21 [AS-014])</p>	<p>The Applicant has considered the position in respect of the specific onshore decommissioning. Please see responses to ExQ1 6.40, 6.41 and 6.42.</p>
Applicant	<p>The Applicant is to review the drafting of Article 27 [AS-014].</p>	<p>The Applicant has reviewed the drafting of Article 27 and changes are included in the revised dDCO (see Document 1.8 of the Applicant's Deadline 1 submission) to reflect the intention for the land identified in Schedule 6 to be only acquired temporarily.</p>
Applicant	<p>The ExA suggested that the Applicant reviews Article 16 of the Swansea Bay Tidal Generating Station DCO with reference to Marine licence interfaces.</p>	<p>The Applicant has reviewed this article which concerns the interplay between authorisation of powers to dredge, abatement of abandoned works and tidal surveying in articles 17 to 19 of that Order and the marine licencing regime. These articles were necessary for Swansea Bay due to the nature and location of</p>

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		<p>the works being undertaken, particularly in tidal river areas and harbour areas where other consents can be required, particularly to dredge. This is not uncommon and dredging is controlled by statute in many major rivers, ports and harbours, for example in the tidal areas of the Thames consent for dredging would be required under the Port of London Act in addition to requiring a marine licence.</p> <p>Article 17 of the Swansea Bay Order authorises dredging as a work under the Order, meaning other authorisation to dredge other than requiring a marine licence, is not required.</p> <p>Article 16 simply provides that the authority under that DCO does not remove the need to obtain a marine licence, it is a statement of the law.</p> <p>The Awel y Môr DCO does not seek authorisation for the type of works which with article 16 of the Swansea Bay DCO was concerned. The Applicant accordingly does</p>

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		not consider it to necessary or helpful to state that the DCO cannot obviate the need to obtain a marine licence as there is nothing in the DCO which could be reasonably taken as seeking to so do and any attempt to do so would be ultra vires for a DCO in Wales.
Applicant	The Applicant is to provide a list and/or hyperlink to the list of documents contained within the Marine Licence application submitted to Natural Resources Wales.	<p>The NRW reference number for the AyM marine licence application is ORML2233 and the link to the case file is: Public register - Customer Portal (naturalresources.wales)</p> <p>The link to the list of application documents submitted to NRW as set out in the Guide to the Marine Licence Application (document ref: ML-1.4.1) is: Public register - Customer Portal (naturalresources.wales)</p>
Applicant	The Applicant is to provide an update in respect of agreements with The Crown Estate.	An update on these agreements is provided in response to ExQ1 3.34.



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