

PLANNING ACT 2008

DEVELOPMENT CONSENT ORDER – AWEL Y MOR OFFSHORE WINDFARM

DEADLINE 3 COMMENTS ON BEHALF OF NORTH HOYLE WIND FARM LIMITED TO DEADLINE 2 SUBMISSIONS BY THE APPLICANT ON WRITTEN REPRESENTATIONS

Reference	Written Representation Comment	Applicant’s Response	NHWFL Further Response
REP1-085-1.1	<p>Introduction</p> <p>North Hoyle Wind Farm Limited (“NHWFL”) operate the North Hoyle wind farm (“NH”) to the south of the proposed Awel Y Môr wind farm (“AYM”). The location of NH can be seen on sheet 2 of the Works Plans</p>	<p>This is noted by the Applicant.</p>	<p>No further comment</p>
REP1-085-2.1	<p>Cable Route</p> <p>The Works Plans shows that Work No.2 crosses the export cable of NH. Whilst an optioneering exercise was conducted in relation to the preferred cable route, there are alternative routes which would avoid the need to cross the North Hoyle cable. The Promoter has not satisfactorily explained why the two shortlisted cable routes (out of three) were rejected since at least one of these does not affect North Hoyle, whilst not affecting Constable Bank. It is noted that ExQ1 question 3.27 requests the Applicant to comment on the alternative route which avoids Constable Bank and the North Hoyle Cable. NHWFL reserves its position on this point pending receipt of the Applicant’s response to question 3.27.</p>	<p>This matter was raised by NHWFL in its Relevant Representation and the Applicant has provided a response to this accordingly in document REP1-001. The Applicant provided further detail in its response to ExQ1.3.28, document REP1-007. On this basis, the Applicant considers it has fully justified the need for the offshore export cable corridor to cross NHWF's cables.</p>	<p>NHWFL has further considered the material lodged by the Applicant. Chapter 4 of the ES includes the sites selection process for the cable route. Paragraph 137 explains that, following the Scoping phase, consultation was undertaken on 3 options – West C, East A and East B (shown on Fig 15 of Chapter 4). Paragraph 141 explains that West A was removed “as a result of the stakeholder consultation received and the desire to avoid potential impacts to the Constable Bank.” Paragraph 143 of the ES confirms that the 2 remaining routes (East A and East B) avoid this feature and there appears to have been little to choose between them.</p> <p>The next stage of the process was refinement of the landfall options. Paragraph 147 of the</p>

			<p>ES confirms that 3 landfall options were progressed for consultation – Landfall 3, Landfall 4 and Landfall 5. East A was associated with Landfall 4 and East B with Landfall 5 . Paragraph 150 of the ES includes a statement that “Landfall 4 was also associated with a likelihood of crossing the Constable Bank feature.” This statement conflicts with the statement in paragraph 143 that Landfall 4 would avoid this feature. It therefore appears that the Landfall assessment may have proceeded in error as to the likely environmental impacts of Landfall 4.</p> <p>Notwithstanding that point, it is noted that the presence of Constable Bank would result in the Landfall 4 requiring to cross two other cable routes with the alternative being a long HDD with a significant risk of failure. Although it might be helpful to see further details of that alternative route, on balance, NHWFL no longer seeks to question the Applicant’s approach to cable route assessment.</p>
REP1-085-3.1	<p>Property Impacts Work No.2 intrudes into the “Designated Area” for the NH export cable identified in the lease of the NH by the Crown Estate Commissioners to NH for the operation of NH. Within the Designated Area, there is provision in the Crown Estate lease which protects the position of NH. The</p>	<p>The Applicant is seeking an Agreement for Lease from The Crown Estate which it understands can be granted without the consent of NHWFL. Following development consent (DCO and Marine Licence) being secured for the project, and AyM progressing with the proposals, it will be necessary to</p>	<p>The parties are in agreement that the consent of NHWFL is required on order for the lease to be obtained from the Crown Estate. Although the parties are working on a cable crossing agreement this has not been agreed and the consent of NHWFL is not in place.</p>

	<p>Crown Estate Commissioners have covenanted with NH not to grant any lease, licence or consent (other than where the lease requires that NH's consent is obtained) for the construction of any works within the restriction zone without NH's consent (not to be unreasonably withheld). There is provision in the lease for the Crown Estate Commissioners giving consent for the laying of conduits in the Designated Area but this is subject to agreement with NH on protection for the NH export cable both in relation to the original installation and future inspection, maintenance, repair or renewal work.</p>	<p>define the area to be leased for the cable, and NHWFL's consent (via the cable crossing agreement) will be one of the conditions at that stage in order for TCE to grant the Lease. Therefore, the Applicant considers that this is not an issue which prevents the project from moving ahead at this stage.</p>	
REP1-085-3.2	<p>The Applicant has proposed that NH consent can be covered in the cable crossing agreement which is being discussed between the parties. In principle, that would be an appropriate mechanism to deal with the need for consent. At present, however, a cable crossing agreement has not been concluded and the consent of NH has not been granted. This represents an impediment to delivery of the scheme.</p>	<p>The Applicant considers that cable crossing agreements of this nature are routinely secured in the development of offshore windfarms (often after consent is granted and just before construction commences). NHWF cannot unreasonably withhold its consent under the terms of its Lease with The Crown Estate, therefore the Applicant considers that there is no such impediment to the project</p>	<p>The fact that the consent of NHWFL is required for the Crown Estate lease and is not in place is clearly an impediment to the project.</p>
REP1-085-4.1	<p>Protective Provisions Provisions are required to ensure that the construction of the development, including its cable connection, does not interfere with NH or any planned works which might be required to NH, together with an indemnity for any impacts which are</p>	<p>NHWFL is expected to have a schedule of routine maintenance for its offshore export cable, as is common practice in the industry. The Applicant will provide NHWFL with the schedule and details of works for laying the offshore export cable for NHWFL</p>	<p>The terms of the crossing agreement are still to be agreed if parties cannot resolve matters by the end of the examination then it may be necessary to propose for aspects which cannot be agreed to be covered by means of protective provision.</p>

	<p>caused. Whilst there are protective provisions in Part 1 of Schedule 9 for electricity undertakers, these do not apply to the offshore works. Appropriate provision must be included for the offshore works which may impact on NH.</p>	<p>review and coordination of the respective schedules to ensure no conflict between works. In the event of emergency maintenance works being required on NHWFL offshore export cable during the Applicant's works, the crossing agreement will make provision for a coordinated NHWFL access to the works' area for the purposes of urgent maintenance work.</p>	
REP1-085-4.2.a	<p>The Applicant has proposed a cable crossing agreement to regulate the impacts of cable installation. Whilst this is an acceptable approach in principle, the terms of the agreement have yet to be agreed. The three principle issues that require to be resolved are:-</p> <p>a) NHWFL requires control over the timing of the AyM cable installation to ensure that this does not conflict with any work which may be planned for NH;</p>	<p>The Applicant will provide NHWFL with the schedule and details of works for laying the offshore export cable for NHWFL review and coordination of the respective schedules to ensure no conflict between works. No other protective provisions in consideration for the Applicant's offshore works give control of works programmes nor timings to a third party, therefore the Applicant does not consider this to be normal industry practice</p>	<p>There requires to be a mechanism in the cable crossing Agreement to ensure that the works proposed by the Applicant do not conflict with any works proposed by NHWFL. NHWFL looks forward to receiving the Applicant's proposals on this point.</p>
REP1-085-4.2.b	<p>b) The draft agreement has been prepared on a reciprocal basis with NHWFL being placed under new obligations (including the need for insurance and indemnities) if NH intend to carry out works to their cable connection. NHWFL is no currently subject to any such restrictions and the imposition of these is not acceptable.</p>	<p>The draft crossing agreement is in line with normal industry practice (and based on a standard and previously-used template provided by NHWFL). Once the initial crossing works have been completed, any further works by either party will be subject to a process of notification and</p>	<p>The Applicant's draft seeks to impose insurance and indemnity liabilities on NHWFL for future works which they do not currently have. That is not acceptable to NHWFL.</p>

		coordination, and the liability of the party carrying out the works will be limited to physical damage to the other party's cables only.	
REP1-085-4.2.c	c) Appropriate indemnities are required from the Applicant in relation to any losses suffered by NHWFL as a result of works carried out under the DCO. The Applicant has proposed an indemnity but this is limited to the cable installation works. NHWFL is concerned on the basis of previous experience that works elsewhere in the scheme could lead to temporary loss of their export connection and a consequent interruption to the service which they provide. It is noted that protective provisions for other electricity undertakers provide an indemnity for loss caused by interruption to service provision. A similar indemnity is required for any such impacts caused to NHWFL.	The only works the Applicant will be carrying out, and that directly interact with NHWFL infrastructure, are the cable crossing works. The crossing agreement will provide suitable protection for NHWFL for any damages caused by the Applicant's crossing works. For works carried out by any other parties that may affect NHWF infrastructure, and which are outside of Applicant's control, NHWFL will need to seek and agree indemnities with those parties	The indemnities sought are for impacts which are the result of the Applicant's works not works carried out by third parties.
REP1-085-4.3	It is noted that the Applicant has sought to make a distinction between matters which require protective provisions to be included in the Order and other matters where a crossing agreement is required. NHWFL does not accept this distinction. They are both examples of where the potential negative impacts of the proposed development on existing apparatus require to be addressed by a legal mechanism to protect the position of the existing undertaker. It may be that the most appropriate mechanism to deal with the	The Applicant has adopted a draft crossing agreement based on a standard and previously-used template provided by NHWFL. The Applicant believes this is the appropriate mechanism for dealing with the matters raised.	NHWFL is working with the Applicant to try and resolve matters by agreement. The point is simply being made that if parties cannot resolve matters by the end of the examination then it may be necessary to propose for aspects which cannot be agreed to be covered by means of protective provision.

	<p>potential impact on NHWFL is through a cable crossing agreement. However, if such an agreement cannot be concluded by the end of the examination then it may be necessary for the obligations to be recast in the form of protective provisions.</p>		
REP1-085-4.4	<p>NHWFL will continue to engage with the Promoter with a view to reaching agreement on the cable crossing agreement. However, pending resolution of such matters, development consent should not be granted.</p>	<p>The Applicant has adopted a draft crossing agreement based on a standard and previously-used template provided by NHWFL. The Applicant believes this is the appropriate mechanism for dealing with the matters raised</p>	<p>NHWFL is working with the Applicant to try and resolve matters by agreement. Again, The point is simply being made that if parties cannot resolve matters by the end of the examination then it may be necessary to propose for aspects which cannot be agreed to be covered by means of protective provision.</p>