



The Planning Inspectorate

Planning Act 2008 – Section 91

Application by RWE Renewables UK Dogger Bank South (West) Ltd and RWE Renewables UK Dogger Bank South (East) Ltd for an Order granting Development Consent for the Dogger Bank South Offshore Wind Farms

Agenda for Issue Specific Hearing 1 (ISH1) on the scope of the Proposed Development, including construction activities and the principles of the Applicants' draft Development Consent Order (DCO)

Hearing	Date and Time	Location
Issue Specific Hearing 1: the scope of the Proposed Development, including construction activities and the principles of the Applicants' draft DCO	Wednesday 23 October 2024 Hearing starts at 09:30 ¹ Virtual event Virtual Registration from: 09:00 ²	By virtual means using Microsoft Teams

Hearings Guidance: Please see Annex A of this Agenda

Interested Parties who wish to speak at this event were required to provide notification by the Pre-Examination procedural deadline. If you haven't notified us that you wish to speak, can you please contact the Case Team (doggerbanksouth@planninginspectorate.gov.uk) as soon as possible.

Each Interested Party is entitled to make oral representations at hearings. However, this is subject to the power of the Examining Authority (ExA) to control the conduct and management of hearings.

The event will be open 30 minutes prior to the start of the hearing to enable a prompt start. Hearings will finish as soon as the ExA deems that all those present have had their say and that all matters have been covered.

The agenda is for guidance only. It is not designed to be exclusive or exhaustive. The ExA may add other issues for consideration, may alter the order in which issues are considered and will seek to allocate sufficient time to each issue to allow proper consideration of them.

¹ If you are joining as an active participant, please follow the joining instructions for the virtual event carefully and connect to the Hearing in good time. In common with traditional Hearings, the event will start on time irrespective of any late arrivals, for whom access may not be possible.

² Full instructions on how to join online or by telephone will be provided in advance of the meeting to those who register to participate.

Any lack of discussion of a particular issue at a hearing does not preclude further examination of this issue, including the asking of further written questions.

Every effort will be made to ensure that the issues will be discussed on the day that they are scheduled for. Should the consideration of these issues take less time than anticipated, the ExA may conclude the Hearing as soon as all relevant contributions have been made and all questions asked and responded to.

If there are additional matters to be dealt with or there are submissions that take a considerable amount of time, there may be a need to continue the session for longer on the day. Alternatively, it may be necessary to prioritise matters and defer others to further written questions.

Purpose of this Issue Specific hearing:

The purpose of the Hearing is to examine the scope of the Proposed Development, including construction activities and the principles of the Applicants' draft DCO, in particular to:

- clarify issues around how the draft DCO is intended to work – what would be consented, the extent of the powers and what requirements, provisions and agreements are proposed;
- identify any possible issues of prevention, mitigation or compensation which are not covered by the draft DCO as currently drafted; and
- establish or confirm the views of Interested Parties as to the appropriateness, proportionality or efficacy of the proposals.



The Planning Inspectorate

Agenda

Title of meeting	Dogger Bank South Offshore Wind Farms Issue Specific Hearing 1 – the scope of the Proposed Development, including construction activities and the principles of the Applicants’ draft DCO
Date	Wednesday 23 October 2024
Time	09.30
Venue	Virtual event
Attendees	Invitees

1 Welcome, introductions, arrangements for the Hearing

2 Articles and Schedules of the draft DCO

- 2.1 The Applicants will be asked to provide a very brief overview of each part of the draft DCO, except for Schedule 15 (Protective Provisions) which will be considered at the Compulsory Acquisition Hearing on Tuesday 22 October 2024.
- 2.2 Matters arising from the supplementary agenda.
- 2.3 The ExA will ask questions in respect of draft DCO powers seeking responses where appropriate from the Applicants, the local council, Natural England, the Marine Management Organisation and other Interested Parties. Interested Parties will also be invited to highlight any points of clarification in relation to the draft DCO articles and Schedules.

3 Infrastructure and Other Uses

- 3.1 Wind wake loss and effects on productivity of existing and proposed offshore wind farms.
- 3.2 Scope of the assessment of effects on infrastructure and other uses: vessel movements during construction.

4 Military Radar

- 4.1 Impacts of the proposed West Array on the Staxton Wold Primary Surveillance Radars.

5 Commercial Fisheries

- 5.1 An overview of approach to the assessment including the definitions of receptor sensitivity, magnitude of impact, and significance of effect [APP-120].

- 5.2 An overview of the data used and surveys undertaken to support the assessment of impact to the commercial fishing industry.
- 5.3 Assessment of the cumulative effects with other relevant projects.

6 Marine and Coastal Processes

- 6.1 The assessment of sediment transport pathways and extent of the cable burial risk assessment.

7 Onshore Historic Environment

- 7.1 Assessment of the effects from lighting on the significance of heritage assets during construction and operation of the Proposed Development.
- 7.2 Defining whether there would be substantial or less than substantial harm to the significance of heritage assets.
- 7.3 ES Chapter 22: Onshore Archaeology and Cultural Heritage [APP-172] assessment methodology: defining the importance of heritage assets; grouping of heritage assets to assess the potential effects; impacts of assessing gas insulated switchgear design vs an air insulated switchgear design for the converter station.
- 7.4 Visualisations: Blackmill and scheduled barrows, perimeter of Risby Hall Registered Park and Garden and heavy anti-aircraft gunsite at Butt Farm.
- 7.5 Cumulative effects.
- 7.6 Historically important hedgerows.

8 Seascape, Landscape and Visual

- 8.1 Scope of the assessment: scoping out effects from onshore platform(s) outside of the array area; scoping out of the effects on the Yorkshire Wolds candidate National Landscape.
- 8.2 Visualisations.
- 8.3 Significance of effects.
- 8.4 Trees and hedgerows.

9 Onshore Water Environment

- 9.1 The scope of the Geomorphological survey with specific regard to its spatial extent and the identification of included watercourses.
- 9.2 Impact on the functional floodplain during all phases of the projects and the application of the sequential test/ approach.
- 9.3 An overview of temporary watercourse crossings including how these are assessed.

10 Onshore Ecology

- 10.1 An overview of the proposed biodiversity enhancements including the scope and baseline assessment of the Biodiversity Net Gain Strategy [APP-157].
- 10.2 The assessment of air quality impacts on the Humber Estuary Special Protection Area, Special Area of Conservation and Ramsar.
- 10.3 The assessment of dune and cliff habitats at the emergency beach access.

11 Land Use and Ground Conditions

- 11.1 An overview of the approach to the assessment including the definitions of receptor sensitivity, magnitude of impact, and significance of effect [APP-169].
- 11.2 Impacts to Environmental Stewardship Schemes including the associated ecological assessment.
- 11.3 An overview of the potential for encountering ground contamination and the scale of remediation measures to mitigate the risk to groundwater and groundwater resources that may be required.

12 Traffic and Transport

- 12.1 The approach to the assessment of driver delay effects and sensitive junction modelling with specific regard to junctions 1-13.

13 Action Points arising from the Hearing

14 Any other business

15 Close of Hearing

Attendees:

All Interested Parties are welcome to attend the hearing. However, the ExA considers that representatives for the following parties should consider attending because the ExA believes that the material that they have submitted raises issues that may need to be explored at the hearing:

- The Applicant
- East Riding of Yorkshire Council in its role as the Local Planning Authority
- East Riding of Yorkshire in its role as the Highways Authority
- Any other public authority affected by the Proposed Development
- Natural England
- Marine Management Organisation
- National Federation of Fisherman's Association
- Ministry of Defence
- Historic England
- National Highways
- Hull City Council

The Applicants are requested to have people with the following expertise to assist the hearing:

- Drafting of the DCO
- Landscape and Visual
- Land Use and Agricultural Land
- Infrastructure and Other Uses
- Heritage Assets
- Flood Risk and Geomorphology
- Commercial Fisheries
- Traffic and Transport
- Ecology
- Marine Processes
- Air Quality

This list may also assist other Interested Parties in preparing for the hearing.

List of documents for the Applicant to potentially present during the hearing:

- [APP-027] the draft Development Consent Order
- [APP-074] ES Appendix 5-2 - Obstacle Crossing Register
- [APP-117] ES Chapter 13 - Commercial Fisheries
- [APP-128] ES Appendix 15-2 - Airspace Analysis and Radar Modelling Report
- [APP-166] ES Appendix 20-2 - Geomorphological Baseline Survey Technical Report
- [APP-169] ES Chapter 21 - Land Use
- [PDA-010] ES Chapter 23 - Landscape and Visual Impact Assessment Figures
- [APP-081] ES Chapter 8 - Marine Physical Environment Figures (Figure 8-5)
- [APP-196] ES Chapter 24 - Traffic and Transport Figures (Figure 24-4)

Conduct and Management of Hearings

The Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 provide that the ExA that will probe, test and assess the evidence at hearings through direct questioning of persons making oral representations. Questioning at this Hearing will therefore be led by the ExA. Cross questioning of the person giving evidence by another person will **only** be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that a person has had a fair chance to put their case. Parties wishing to make a representation will be invited to do so at the ExA's discretion.

The ExA will begin the Hearing with opening comments and introductions, then will run through housekeeping matters and explain how the Hearing will be conducted. The ExA's expectation is that each hearing session will typically last for one to two hours. However, the actual duration will depend on the progress made on the day and will be subject to the ExA's powers of control over the conduct of the Hearing.

The agenda may be amended by the ExA at the start of the Hearing or throughout its course. Furthermore, the ExA may wish to raise matters arising from oral submissions, Relevant Representations and Written Representations, and pursue lines of inquiry that are not listed on the agenda in the course of the discussion.

The Hearing is being held at the discretion of the ExA to discuss matters that it considers to be important and relevant to the effective and robust examination of the application. Consequently, the business of the Hearing will be limited to the matters identified in the agenda or otherwise raised by the ExA.

Active participation is at the invitation and discretion of the ExA. Oral submissions must address the matters and questions identified on the Hearing agenda or raised by the ExA at the hearing. Oral submissions on other subject matters or from persons who have not been invited to speak by the ExA may only be heard at the discretion of the ExA, who may decide that such matters are not heard in the interests of relevance, efficiency or fairness.

A recording and transcript of the Hearing will be published by the Planning Inspectorate on the project page of the national infrastructure website³ and any Interested Party may make a written submission on the specific matters either included in the agenda or arising at the Hearing by **Deadline 1, 8 November 2024**.

³ [Dogger Bank South Offshore Wind Farms - Project information \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)



The Planning Inspectorate

Issue Specific Hearing 1 (ISH1)

Wednesday 23 October 2024

Supplementary Agenda Additional Questions

As set out in the Examination Timetable the Examining Authority (ExA) has decided to substitute the normal practice of issuing written questions with the Rule 8 letter as the ExA believe that the responses received to Deadlines 1 and 2 will reduce the need for the ExA to ask a significant number of written questions.

Nevertheless, in preparation for this Hearing, the ExA has a number of questions which it considers require relatively straightforward responses, clarification and/ or the submission of additional information/ evidence. Rather than use the time at the Hearing to discuss these matters, the ExA has listed these questions in the table below and would ask that responses be submitted at **Deadline 1, 8 November 2024**. If anyone considers that the ExA need to explore these matters orally then, as detailed on the agenda, there will be the opportunity at the start of the Hearing to raise this with the ExA.

The questions below are based on the draft Development Consent Order (DCO) volume 3 dated June 2024 [APP-027]. Please note that the ExA is required to submit a draft Development Consent Order with its report to the Secretary of State regardless of its recommendation. Therefore, the questions and comments below are made on a without prejudice basis.

Number	Subject	Response by	Question/ Clarification
GENERAL			
ISH1.G.01	Drafting	Applicants	The preamble as drafted currently refers to a panel. The application is being considered by an Examining Authority. All references to panel need to be replaced with Examining Authority.
ISH1.G.02	Drafting	Applicants	Special Category Land Paragraph 5 of the preamble to the draft DCO refers to 'special category'. As the only Special Category Open Land is open space please delete 'special category land' and replace with 'open space' and delete 'comprised' as this is superfluous drafting.

Number	Subject	Response by	Question/ Clarification
ISH1.G.03	Drafting	Applicants	<p>Substantial change Paragraph 6 of the preamble to the draft DCO as drafted would allow the Secretary of State to accept modifications which in the opinion of the Secretary of State “Do not make any substantial changes to the proposals comprised in the application”. Please explain the use of this drafting as opposed to the traditional drafting of ‘not materially different’ and if the current drafting is retained would ‘substantial change’ need to be defined?</p>
ISH1.G.04	Clarification	Applicants	<p>Exercise of powers Paragraph seven of the preamble to the draft DCO refers to sections [114, 115, 120(a), 123, 140 and 149A] of the 2008 Act. Should it also include reference to section 122 (Purpose for which compulsory acquisition may be authorised)?</p>
ISH1.G.05	Clarification	Applicants	<p>Consistency in referring to sections or parts of Acts within Parts 2 to 7 Currently there is no consistency when referring to sections of Acts in the draft DCO. Sometimes the section is referred to in full eg Article 6 (b) refers to Section 23 (prohibition of obstructions etc in watercourses). However, in other sections of the draft DCO the reference just refers to the section numerically eg Article 5(8)(a) refers to Section 6 of the 1989 Act. For precision, please review and amend so that the approach is consistent.</p>
ARTICLES			
ISH1.A.01	Drafting	Applicants	<p>Article 2 – certification of plans and documents Article 2 provides interpretation for a number of documents which would be certified by the Secretary of State under Article 42 and referenced in Schedule 19.</p> <p>In some of these the drafting is “means the plans as certified as the ... by the Secretary of State under article 42” and in others the drafting is “means plans as certified as the ... by the Secretary of State under article 42 (<i>certification of plans and documents etc.</i>)”.</p> <p>For precision and consistency, can the drafting be reviewed and amended to “means the plans certified by the Secretary of State as the ... for the purposes of this Order under Article 42 and referenced in Schedule 19”.</p>
ISH1.A.02	Drafting	Applicants	<p>Article 2 – authorised project For clarity and precision should the definition be amended as follows:</p>

Number	Subject	Response by	Question/ Clarification
			“authorised project” means the authorised development and ancillary works authorised by this Order . If not, why not?
ISH1.A.03	Clarification and Drafting	Applicants	<p>Article 2 – array cable Article 2 includes a standalone definition for array cable but also includes a general definition for cable.</p> <p>Why does array cable need to be separately defined?</p> <p>Could the definition for cable be amended to include the array cable?</p> <p>If a separate definition is necessary for the array cable, are there any other types of cabling that would also need to be defined?</p>
ISH1.A.04	Clarification	Applicants	<p>Article 2 - cable The definition of cable is very wide and more detailed than the definition used on other Offshore Wind Farm (OWF) Orders (eg Hornsea 4, Sheringham and Dudgeon), please explain why this is necessary for this Proposed Development.</p>
ISH1.A.05	Clarification	Applicants	<p>Article 2 – cable crossing The definition of cable crossing includes reference to “physical protection measures including rock placement or other cable protection”. Given cable protection is defined within this article and that definition includes a reference to cable protection, for precision should “physical protection measures including rock placement or other cable protection” be replaced with “cable protection”? If not, why not?</p>
ISH1.A.06	Clarification	Applicants	<p>Article 2 – addresses for organisations In the interpretations, certain definitions for organisations (eg National Highways and the Defence Infrastructure Organisation) include the full postal address, but for others (eg the Environment Agency, Maritime and Coastguard Agency, Marine Management Organisation, Natural England and statutory historic bodies) no address details are provided. However, these details are provided in the draft deemed marine licences(DMLs) contained in paragraph (1)(4) in Schedules 10 -14. For consistency should address details be provided for all organisations who are defined and if not, why not?</p>
ISH1.A.07	Drafting	Applicants	<p>Article 2 – maintain As currently drafted, the definition would only allow the removal, reconstruction or replacement of foundations; does “and buildings” need to be added?</p>

Number	Subject	Response by	Question/ Clarification
			As currently drafted 'maintenance' must be construed accordingly. To allow greater flexibility should this be replaced with “ and any derivation of maintain must be construed accordingly”?
ISH1.A.08	Drafting	Applicants	Article 2 – offshore platforms A number of the offshore platform definitions include reference to a helicopter platform. Helicopter platforms normally require bird deterrents in order to operate safely. Where a helicopter platform is listed, should the definition be expanded to also refer to bird deterrents? If not, why not?
ISH1.A.09	Drafting	Applicants	Article 2 – outline communication and public relations procedure This is an appendix to the outline code of construction practice and therefore would it need to be defined in its own right? In addition, would it need to be defined as it is not referred to anywhere else in the draft DCO?
ISH1.A.10	Drafting	Applicants	Article 2 – outline documents to be certified Article 2 includes interpretations for a number of outline documents which only appear in Schedule 19 as a document that would need to be certified by the Secretary of State. If the document is not referred to in the any of the requirements or conditions of the DMLs, why would it need to be included in the interpretations? Please review and amend as necessary.
ISH1.A.11	Drafting	Applicants	Article 2 – typo The words “under article 42” preface “outline offshore and maintenance plan” - this would appear to be a typo and needs to be deleted.
ISH1.A.12	Clarification	Applicants	Article 2 – offshore works As drafted, the works would be 1A to 9A and 1B to 10B – why is there a difference between DBS East and DBS West offshore works given that work 10A and 10B would deliver the same work? Should this interpretation be amended to include 10A or to refer to 9B?
ISH1.A.13	Drafting	Applicants	Article 2 – outline soil management plan This is an appendix to the outline code of construction practice and therefore would it need to be defined in its own right? In addition, would it need to be defined as it is not referred to anywhere else in the draft DCO?
ISH1.A.14	Clarification	Applicants	Article 2 – outline written scheme of investigation (offshore) Why is it necessary to include an interpretation for the outline written scheme of investigation (offshore) in Article 2 when it is also defined in the draft DMLs which include a condition pertaining to it? Please amend as necessary.

Number	Subject	Response by	Question/ Clarification
ISH1.A.15	Clarification	Applicants	<p>Article 2 – relevant highway authority As currently drafted, the only highway authority referred to is East Riding of Yorkshire Council, whereas the Proposed Development would also affect roads where Hull City Council is the highway authority. Please amend the drafting to provide an interpretation for “relevant highway authority” which means East Riding of Yorkshire Council, or any successor to it as highway authority for the land in question. Please also insert an interpretation for “relevant highway authorities” as meaning East Riding of Yorkshire Council and Hull City Council, or any successor to them as highway authorities for the land in question, or amend the drafting of the current interpretation to include reference to Hull City Council.</p>
ISH1.A.16	Drafting	Applicants	<p>Article 2 – missing interpretations The following terms are referred to in the draft DCO, but an interpretation for them is not currently included in Article 2: Horizontal Directional Drilling; bank and public holidays; and working day. For the purpose of clarity and enforceability should they be included in Article 2 and if not, why not?</p>
ISH1.A.17	Clarification	Applicants	<p>Article 2– future proofing Other DCO’s for OWFs have included the following drafting at the end of Article 2 to futureproof against any subsequent changes in legislation; would it be appropriate to include such drafting in the draft DCO?</p> <p>“any reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any re-enactment”</p>
ISH1.A.18	Clarification	Applicants	<p>Article 5(3) and 7(b) Paragraph 5(3) as drafted only refers to a transfer to a transferee, should it also include a reference to a transfer to a lessee?</p> <p>If 5(3) is amended, would paragraph 7(b) also need to be amended to refer to lessee?</p> <p>Does paragraph 7(b) need to include the following exemption in relation to the DMLs - “save in the case of deemed marine licences transferred or granted in respect of any</p>

Number	Subject	Response by	Question/ Clarification
			breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee"? If not, why not?
ISH1.A.17	Clarification	Applicants	Article 5 (14) As currently drafted, this paragraph would not restrict the transfer of part of the DMLs and refers to the article as a whole, as this paragraph only deals with the transfer of DMLs. Would it be more accurate to refer to paragraph 3, ie "Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the whole of the benefit of the provisions of any deemed marine licence to another person by the undertaker pursuant to an agreement under paragraph (3) this article... "?
ISH1.A.18	Clarification	Applicants	Article 6 This article is entitled disapplication and modification of legislative provisions. Other made DCOs refer to application and modification of legislative provisions. Please explain why the term 'disapplication' has been used.
ISH1.A.19	Clarification	Applicants	Article 8(1)(C) Why is this power needed?
ISH1.A.20	Clarification	Applicants	Article 9 (1) (b) As drafted, this refers to the temporary stopping up, alteration or diversion of a street by the undertaker under article 10 (temporary stopping up of streets). However, Article 10 refers to the temporary closure of streets; should the drafting be amended as follows, "the temporary closure , alteration or diversion of a street by the undertaker under article 10 (<i>temporary closure of streets</i>)"?
ISH1.A.21	Clarification	Applicants	Article 9(4) Clarify why this drafting is considered necessary, given it is not included in other made DCO eg Hornsea 4.
ISH1.A.22	Drafting	Applicants	Article 10 (2) To improve the precision of drafting and for the purposes of enforceability should the following additional wording be included in the drafting and if not, why not, "Without limiting the paragraph (1), the undertaker may for the purpose of carrying out the authorised development use any street temporarily closed or restricted under the powers conferred by this article as a temporary working site."?
ISH1.A.23	Drafting	Applicants	Article 11 (6) and (7)

Number	Subject	Response by	Question/ Clarification
			Both these paragraphs make reference to stopping up rather than closure. As the Article relates to the temporary closure of Public Rights of Way please amend as necessary.
ISH1.A.24	Drafting and clarification	Applicants	<p>Article 12 (2)</p> <ol style="list-style-type: none"> 1. Should this paragraph include reference to the operation of the Proposed Development, eg “without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may for the purposes of constructing, operating and maintaining the authorised development...”? 2. This paragraph as currently drafted would enable the undertaker to permanently or temporarily alter the layout of any street “whether or not within the Order limits”. This power is very wide, why is this necessary and if it is necessary, what is the purpose of paragraph (1) which would appear to seek to limit the extent of the works? 3. Given (2) it is unclear why some of the adjoining roads are then included in the Order limits and specifically mention alterations etc (eg Work No 19A/ B) when this article would allow for the same/ similar changes to be made to other roads which are not within the Order limits.
ISH1.A.25	Clarification	Applicants	<p>Article 15</p> <p>Given the powers provided by the other Articles in Part 3 and Part 5 of the draft DCO, why is this Article necessary? Have you identified any private roads that would need to be used and that would need the additional protections offered by this article that would not be delivered through other Articles (eg Temporary Possession) in the draft DCO?</p>
ISH1.A.26	Drafting	Applicants	<p>Article 17 (1)</p> <p>To improve the precision of the drafting, should the following wording be inserted in 17(1), “Subject to the provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient”?</p>
ISH1.A.27	Clarification	Applicants	<p>Article 18</p> <p>As currently drafted the Article makes no reference to bore holes, should it? If so, please amend as necessary.</p>

Number	Subject	Response by	Question/ Clarification
			Paragraph (7) limits the ability to survey land to only works 8A/ 9A and 9A/9B – the intertidal works, is this correct?
ISH1.A.28	Clarification	Applicants	Article 19 Is this Article necessary? Such an article was not included in the made DCO for Hornsea 4 as the Applicant advised that it was highly unlikely that any human remains would need to be removed. Given the locational similarities between the onshore works for Hornsea 4 and the Proposed Development, why would such an article be needed on this draft DCO?
Schedule 1 – Authorised Development			
ISH1.S1.01	Clarification	Applicants	Work No 2A/ 2B Work No 2A/ 2B refers to “offshore electrical platforms”. Article 2 does not include a definition for offshore electrical platforms, but does include definitions for other offshore elements. Would offshore electrical platform need to be defined and if not, why not?
ISH1.S1.02	Clarification	Applicants	Work No 3A (c) This refers to the DBS West Project but is within the “A” works which related to DBS East, is this correct or does it need to include the words (if required) as appears in (d) and (e)?
ISH1.S1.03	Clarification	Applicants	Work No 13A/ 13B Work No 13A/ 13B includes “connection to pre-existing ducts”. Please confirm: <ol style="list-style-type: none"> 1. where pre-existing ducts is defined; if it is not defined would it need to be and if not, why not; 2. would this need to be controlled and if so how/ where is this currently secured in the draft DCO?
Schedule 2 – Part 1 - Requirements			
ISH1.S2.01	Drafting	Applicants	Must not be commenced v may commence The Requirements in the draft DCO do not include consistent drafting where the Proposed Development would be restricted from commencing until details had been submitted and approved, eg Requirement 7 uses the drafting “No DBS East Project offshore works may commence until....”, whereas Requirement 8 uses the drafting “The DBS East Project onshore works must not be commenced until....”. For consistency use one form of drafting and review and amend the Requirements as needed.
ISH1.S2.02	Drafting	Applicants	Written scheme

Number	Subject	Response by	Question/ Clarification
			<p>Where information would be required to be submitted to and approved by the relevant planning authority, you have used the drafting “written scheme” rather than the traditional “submitted to and approved in writing by”. As drafted, how the relevant planning authority would approve the details is not stipulated. For clarity and enforceability should the traditional drafting be used and if not, why not? Depending on response please review all the requirements and amend drafting as needed.</p> <p>Alternatively, to streamline the drafting and reduce the need for repetition could the following Requirement be inserted rather than amending the Requirements to include “in writing”, “Where the approval, agreement or confirmation of the Secretary of State, the relevant planning authority or another person or organisation is required under a requirement, that approval, agreement or confirmation must be given in writing”?</p>
ISH1.S2.03	Clarification	Applicants	<p>Requirement 2 (1) (d) This Requirement refers to mean sea level as the point from which the measurement is taken. Why is mean sea level used rather than lowest astronomical tide (LAT)? If LAT was used would this make a difference to the proposed distance and if so, what would this be?</p>
ISH1.S2.04	Clarification	Applicants	<p>Requirement 3 (1) The use of “or more” would seem to indicate that both types of foundation could be used, for accuracy should this be replaced with “of either”, if not why not?</p> <p>If the purpose of the Requirement is that both foundations could be used, would it be simpler to replace the drafting with “wind turbine generator foundations must be piled monopile or piled jacket foundations.”?</p>
ISH1.S2.05	Clarification	Applicants	<p>Requirement 5 (2) Reference to Dogger Bank SAC is included within this Requirement. Dogger Bank SAC is not defined in Article 2, should it be included? If not, why not?</p> <p>If it is not included, for accuracy should the drafting be amended to Dogger Bank Special Area of Conservation as has been used in the conditions on the draft DMLs?</p>
ISH1.S2.06	Clarification	Applicants	<p>Requirement 6 Condition 5 (2) of the proposed DMLs would limit the amount of cable protection to 10% of the length of such cables where they fall within Dogger Bank South Special</p>

Number	Subject	Response by	Question/ Clarification
			Area of Conservation. Does such a restriction need to be included within this Requirement and if not, why not?
ISH1.S2.07	Clarification	Applicants	Requirement 9 (6) and (7) Why are these included in Requirement 9 rather than being a stand-alone Requirement?
ISH1.S2.08	Clarification	Applicants	Requirement 10 (2) 10(1) refers to a written landscape management plan but 10(2) then refers to a landscaping scheme. For accuracy should 10(2) refer to a landscaping management plan or landscaping scheme?
ISH1.S2.09	Clarification	Applicants	Requirement 12 (1) As currently drafted, this would require a written ecological management plan to be in accordance with the outline ecological management plan and the relevant recommendations of appropriate British Standards or Industry Guidance. How would the use of “relevant” and “appropriate” meet the test for drafting to be precise and enforceable?
ISH1.S2.10	Clarification	Applicants	Requirement 12 (2) Should this include similar drafting to 12(1) that would require the relevant planning authority to consult with Natural England and the Environment Agency? If not, why not?
ISH1.S2.11	Drafting	Applicants	Requirement 13 (2) For precision should the drafting be amended as follows, “All permanent fencing, walls and other means of enclosure must be implemented in accordance with the details approved under sub-paragraph (1)”?
ISH1.S2.12	Drafting	Applicants	Requirement 15 (1) Depending on the response to the earlier question regarding submission of information in writing, you may need to amend the drafting to “...must not commence until a written access plan for that access has been submitted to....”. This drafting would be consistent with Requirement 16 where a written plan is stipulated. Please amend as required.
ISH1.S2.13	Drafting	Relevant Highways Authorities	Requirement 15 (2) Please review the list contained within Requirement 15(2) and ensure that all the necessary details are listed. If not provide details of what you would wish to see included in the list and why.
ISH1.S2.14	Drafting	Applicants	Requirement 16 (1) and (2)

Number	Subject	Response by	Question/ Clarification
			<p>The drafting of (1) would only require a written plan for drainage during construction for Work Nos. 22A, 22B, 25A or 26A, and 26B. Please explain the reason for not including all other Works Nos which include temporary work that would require drainage provision.</p> <p>The drafting of (2) would only require a written plan for drainage during operation for Work Nos. 22A, 22B, 25A or 26A, and 26B. Please explain your reason for not including all other Works Nos which require permanent drainage provision.</p> <p>Explain why the drafting of both (1) and (2) do not require consultation with the relevant Internal Drainage Board.</p>
ISH1.S2.15	Drafting	Applicants	<p>Requirement 16 (1) and (2) If the current wording is to be retained, for clarity and precision should the drafting be amended as follows, “Each of Work Nos. 22A, 22B, 25A or 26A and 26B must not commence until a written plan for drainage during construction/ operation of the relevant work has been submitted to and approved by the relevant planning authority in consultation with the lead local flood authority and the Environment Agency”? As currently drafted, there would be some ambiguity as to whether it would be the Undertaker or the relevant planning authority who would need to undertake the consultation.</p>
ISH1.S2.16	Drafting	Applicants	<p>Requirement 17 (1) and (2)</p> <ol style="list-style-type: none"> 1. The drafting of both (1) and (2) require the Undertaker to have carried out consultation with the relevant drainage authority and the Environment Agency before the information is submitted for approval. The usual drafting would require the discharging authority to consult with the relevant drainage authority and the Environment Agency as part of the process of discharging the Requirement. Please explain the reason for using the current drafting. 2. As drafted, what would require the Undertaker to ensure that the details then submitted reflect/ address any comments/ concerns raised in the pre-submission consultation? 3. You have identified the lead local flood authority (LLFA) as the discharging authority. As the LLFA tends to deal with matters in relation to surface water rather than foul water, why have they been identified as the discharging authority for this requirement?

Number	Subject	Response by	Question/ Clarification
ISH1.S2.17	Drafting	Applicants	<p>Requirement 18 (1) As for Requirement 17, as currently drafted this would require the Undertaker as opposed to the discharging authority to undertake consultation with the relevant statutory historic body.</p> <ol style="list-style-type: none"> 1. Please explain the reason for using the current drafting. 2. Explain how the discharging authority could be confident that the details submitted reflect/ address any comments/ concerns raised in the pre-submission consultation.
ISH1.S2.18	Clarification	Historic England and Relevant Planning Authority	<p>Requirement 18 (2) Can you confirm that the list of information to be included detailed in 18(2) for each scheme is complete? If not, provide details of what additional information you would wish to see included in the list and why.</p>
ISH1.S2.19	Clarification	Applicants	<p>Requirement 19 (1) For clarity and precision, should the drafting be amended as follows, “No phase of the onshore works may commence until a code of construction practice (which must accord with the outline code of construction practice) for that phase has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency, Natural England and the MMO where required”? As currently drafted there would be some ambiguity as to whether it would be the Undertaker or the relevant planning authority who would need to undertake the consultation.</p>
ISH1.S2.20	Clarification	Applicants	<p>Requirement 19 (4) and (5)</p> <ol style="list-style-type: none"> 1. Why are the details for pre-commencement screening and fencing works included in this requirement rather than being a standalone requirement? 2. As currently drafted 19(5) would only require the fencing to be removed. Should it include drafting requiring that once removed the land needs to be restored to its former state? Alternatively, is this covered by Requirement 25 and if so, would (5) be necessary?
ISH1.S2.21	Clarification	Applicants	<p>Requirement 20(1) As currently drafted, the Requirement only refers to public holidays should it include a reference to bank holidays as well and in any event to ensure enforceability does Article 2 need to be amended to define what is meant by a public holiday to ensure that all bank and public holidays are captured?</p>
ISH1.S2.22	Clarification	Applicants	<p>Requirement 22 (1) and (2)</p>

Number	Subject	Response by	Question/ Clarification
			Given the use of “or” in 22(1) why is 22(2) necessary, ie why could Work No 26B not be included in 22(1)?
ISH1.S2.23	Clarification	Relevant Planning Authority	<p>Requirement 22 (3) As currently drafted, this would only require the lighting to be implemented as approved. For enforceability should it include a reference to retention and operation ie, “any scheme approved under sub-paragraphs (1) or (2) must be implemented, and thereafter operated and retained in accordance with the approved details”? If not, why not?</p>
ISH1.S2.24	Clarification	Applicants	<p>Requirement 23 (2) As with Requirements 17 and 18, as currently drafted this would require the Undertaker as opposed to the discharging authority to undertake consultation with the relevant statutory historic body.</p> <ol style="list-style-type: none"> 1. Please explain the reason for using the current drafting. 2. Explain how the discharging authority could be confident that the details submitted reflect/ address any comments/ concerns raised in the pre-submission consultation. 3. As currently drafted the Requirement would appear to infer that either the Requirement would need to be discharged, or a European protected species licence be granted. As a European protected species licence is a legislative requirement it would need to be obtained in addition to the Requirement being discharged. Please redraft to make this clear.
ISH1.S2.25	Clarification	Applicants	<p>Requirement 26 As currently drafted, this Requirement appears to indicate that multiple skills and employment strategies would need to be submitted. However, the outline skills and employment strategy [APP-230] seems to refer to one overall strategy. Can you:</p> <ol style="list-style-type: none"> 1. Confirm if the intention is for one or multiple strategy’s to be submitted? 2. If the intention is for one strategy, then redraft the requirement to reflect this. 3. The title refers to local skills and employment, however, the outline document is called the skills and employment strategy. Please amend the title to reflect that the Requirement relates to the skills and employment strategy.
ISH1.S2.26	Clarification	Applicants	<p>Requirement 29 (1) As currently drafted a scheme for remedial action in relation to ground contamination would only need to be submitted where it was likely to cause “significant harm”. As</p>

Number	Subject	Response by	Question/ Clarification
			significant harm is not defined, how would this drafting meet the tests of precision and enforceability?
ISH1.S2.27	Clarification	Applicants	Requirement 32 (1) Should the word “ relevant ” be inserted in front of statutory nature conservation body?
ISH1.S2.28	Drafting	Applicants	Requirement 35 1. Why does this Requirement use (a) and (b) rather than (1) and (2) as has been used for all other Requirements? 2. For precision, should the drafting of (b) include “when submitting any plan or document referred to in sub-paragraph (a) for approval, submit to the relevant discharging authority , any comments duly received....”?
Schedule 2 – Part 2 – Approval of matters specified in requirements			
ISH1.S2.29	Drafting	Applicants	Paragraph 2 (1) and (2) Both subparagraph (1) and (2) refer to “a requirement included/ contained in Part 2 of this Schedule”, should this actually refer to Part 1? Please review and amend as necessary.
ISH1.S2.30	Drafting	Applicants	Paragraph 2 (1)(a) The end bracket on “such validity to be confirmed by the discharging authority within five days of receipt of the application” is missing. Please amend as necessary.
Schedule 5 – Part 1 - Public rights of way to be temporarily closed or restricted			
ISH1.S5.01	Clarification	Applicants	Proposed Bridleway in the parishes of Catwick and Leven, The information for the proposed bridleway in the parishes of Catwick and Leven states, “Between reference points 15a and 15b marked with a dashed purple line on sheet 15 of the Public Rights of Way plan”. However, the line drawn on 2.11 Public Rights of Way Plan is shown as solid purple line, not dashed. Please check and amend as necessary.
Schedules 10, 11, 12, 13 and 14 - Marine Licences			
The draft DCO includes five schedules that deal with marine licences to avoid repetition unless otherwise stated the comments below relate to all five of these schedules.			
The MMO in its relevant representation [RR-030] provided a very detailed review of the proposed DMLs that are set out in Schedules 10, 11, 12, 13 and 14. As a result the ExA does not intend to repeat the general drafting points made by the MMO and has therefore only highlighted any additional drafting issues/ errors. As a result, the ExA comments on the drafting of the DMLs should be read in conjunction with those raised in [RR-030]. Please note that this does not indicate that the ExA agree with all the points raised by the MMO in relation to the drafting of the DMLs.			

Number	Subject	Response by	Question/ Clarification
ISH1.DML.01	Drafting	Applicants	<p>Paragraph 1 Paragraph 1 provides interpretation for a number of documents which would be certified by the Secretary of State under Article 42 and referenced in Schedule 19.</p> <p>In some of these, the drafting is “means the plans as certified as the..... by the Secretary of State under article 42” and in others the drafting is “means plans as certified as theby the Secretary of State under article 42 (<i>certification of plans and documents etc.</i>)”.</p> <p>For precision and consistency can the drafting be reviewed and amended to “means the plans certified by the Secretary of State as thefor the purposes of this Order under Article 42 and referenced in Schedule 19”.</p>
ISH1.DML.02	Clarification	Applicants	<p>Paragraph 1 – Offshore accommodation platform Paragraph 1 includes a detailed definition of what is meant by an “offshore accommodation platform”. Beneath this is a definition for “offshore electrical installations” which means offshore collector platforms, offshore convertor platforms and offshore switching platforms. The detailed definitions for these elements can be found in Article 2 of the draft DCO. Should all the detailed definitions be included in Article 1 of the draft DMLs or should the detailed description for offshore accommodation be moved to Article 2 of the draft DCO alongside the other definitions?</p>
ISH1.DML.03	Clarification	Applicants	<p>Condition 1 (1)(d) The condition refers to mean sea level as the point from which the measurement is taken. Why is mean sea level used rather than lowest astronomical tide (LAT). If LAT was used, would this make a difference to the proposed distance and if so what would this be?</p>
ISH1.DML.04	Drafting	Applicants	<p>Condition 7(3) For precision should the drafting “at least four months” be replaced with “no less than four months”? if not why, not?</p>
ISH1.DML.05	Drafting	Applicants	<p>Condition 9 (7) To improve precision of the drafting should the condition be amended as follows:</p>

Number	Subject	Response by	Question/ Clarification
			<p>“The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part –</p> <ul style="list-style-type: none"> (a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; (b) on completion of construction of the authorised scheme; and (c) within 5 days of confirmation of the notification to the Kingfisher Information Service of Seafish provide such confirmation to the MMO.”?
ISH1.DML.06	Clarification	Applicants	<p>Condition 15 (5) and (6) Both these paragraphs refer to Condition 11 (colouring of structures). Can you confirm that this is the correct condition?</p>
Schedule 16 – Arbitration Rules			
ISH1.S16.01	Drafting	Applicants	<p>Paragraph 1 (1) Paragraph 1(1) refers to Article 43 (<i>arbitration</i>). However, should this refer to Article 47 as Article 43 deals with abatement of works abandoned or decayed. Amend as necessary.</p>
Explanatory Note			
ISH1.EN.01	Drafting	Applicants	<p>Explanatory note The third paragraph refers to Article 41 (<i>Certification of plans and documents, etc.</i>). Article 41 deals with Crown rights. Please amend to refer to Article 42.</p>