

West Burton Solar Project

The Examining Authority's schedule of changes to the draft Development Consent Order (dDCO) [\[REP4-024\]](#)

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Responses are due by Deadline 6: Tuesday 30 April 2024

Note to interested parties

The Examining Authority (ExA) reminds Interested Parties (IPs) that the recommended schedule of changes to the dDCO follows a statutory process. It is made irrespective of the recommendation made by the ExA to the Secretary of State (SoS) and is not an indication that the ExA has already made up its mind on the proposed development.

IPs participation and written responses will be treated as being given without prejudice to the any position or view they hold on the scheme. IPs are asked to identify any outstanding concerns on the drafting of the dDCO that they have raised previously and are not addressed below.

Please note that where parties have indicated that discussions are ongoing in relation to the wording of protective provisions, these matters may not have been included in the table below.

	Reference	ExA's Suggested Changes	ExA's Comments
	Articles		
1	Article 2- Interpretation Definition of 'Maintain'	"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of but not remove, reconstruct or replace the whole of, the authorised development and "maintenance" and "maintaining" are to be construed accordingly;	Current definition wide-ranging in scope with insufficient justification for the extent of power sought provided.
2	Definition of 'Order Land'	"Order land" means the land which is required for or is required to facilitate or is incidental to the authorised development and shown coloured pink, blue or yellow on the land plan and which is within the limits of land to be acquired or used and which is described in the book of reference"	The current definition is considered too broad with the potential to create uncertainty.
3	Definition of MMO (Marine Management Organisation)	Removal of this definition in its entirety	Consequential amendment arising from removal of Article 44 and Schedule 9 (see items 8 and 11).
5	Article - 35 (4) Consent to transfer the benefit of the Order	The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licence.	Consequential amendment arising from removal of Article 44.
6	Article 39 - Trees Subject to tree preservation orders	Amendment to the Article to include reference to an accompanying Schedule and plan to specifically identify the affected trees.	Reflecting Good Practice point 6 of Advice Note 15.
7	Article - 42(2) Arbitration	Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order is not subject to arbitration	Consequential amendment arising from removal of Article 44 and Schedule 9 (see items 8 and 11).
8	Article – 44 Deemed Marine Licence	The marine licence set out in Schedule 9 (deemed marine licence under the 2009 Act) is deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensable	The ExA has noted the comments from the Marine Management Organisation

		<p>marine activities (as defined in section 66 of the 2009 Act) set out in Part 2, and subject to the conditions set out in Part 3, of the licence.</p>	<p>(MMO) at Deadline 3 [REP3-047] which sets out the problems associated with the inclusion of a deemed marine licence (DML) in the dDCO. The ExA has considered the Applicant's response to Deadline 2 and 3 submissions [REP4-066], specifically Appendix A, and understands that the Applicant has included this provision in the dDCO on a precautionary basis. The ExA is minded to recommend the removal of these provisions from the dDCO.</p>
Schedules			
9	<p>Schedule 2, Requirement 9 (Biodiversity Net Gain)</p>	<p>“9.—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority, in consultation with the relevant statutory nature conservation body. (2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 69.4% biodiversity net gain in habitat units, a minimum of 43.7% biodiversity net gain in hedgerow units and a minimum of 26.6% biodiversity net gain in river units for all of the authorised development during the operation of the authorised development, and details of the</p>	<p>The proposed wording will be improved by reference to use of whichever is the current metric at the time the strategy is submitted and approved.</p>

		<p><u>current</u> metric that has been used to calculate that those percentages will be reached.</p> <p>(3) The biodiversity net gain strategy must be substantially in accordance with the landscape and ecological management plan approved under paragraph 7(1) and implemented as approved.”</p>	
10	<p>Schedule 2, Requirement 12 (Archaeology)</p>	<p>Alternative wording: “12 - (1) No part of the authorised development may commence until a written scheme of investigation has been submitted to and approved by the relevant planning authorities in consultation with Historic England. (2) For the purpose of (1) “commence” includes any permitted preliminary works. (3) The scheme submitted under sub-paragraph (1) must – (a) identify areas where archaeological work is required; (b) identify the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; and (c) be carried out by a suitably qualified and competent person or body previously notified to the relevant planning authority. (4) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive ground works may take place only in accordance with the approved written scheme of investigation.</p>	<p>Applicants proposed wording was based on the agreement of the either the written scheme of investigation (WSI) or the Without Prejudice WSI by the relevant host authorities. The ExA notes that updates to both of these documents have been submitted at Deadline 5. Should agreement to either WSI or the Without Prejudice WSI not be secured by the end of the Examination, the parties should give consideration to the alternative wording for this Requirement proposed by the ExA. Reference to Historic England has been retained due to the presence of the Scheduled Ancient Monument adjacent to the Order limits.</p>

11	Schedule 9 - Deemed Marine Licence	Remove entirely (not reproduced due to length).	The ExA has noted the comments from the MMO at Deadline 3 [REP3-047] which sets out the problems associated with the inclusion of a DML in the dDCO. The understands that the Applicant has included this provision in the dDCO on a precautionary basis. The ExA is minded to recommend the removal of these provisions from the dDCO. Check update from Issue Specific Hearing 2.
12	Schedule 16, Part 13, Paragraph 169 (7)	The consent of the Canal & River Trust pursuant to subparagraphs (1) to (6) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (requirements) or Part 2 of Schedule 9 (Deemed marine licence under the 2009 Act).	Consequential amendment arising from removal of Article 44 and Schedule 9 (see items 8 and 11).
13	Schedule 16, Part 13, Paragraph 172(5)	The withholding of an approval of the engineer under this paragraph will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (requirements) or Part 2 of Schedule 9 (Deemed marine licence under the 2009 Act).	Consequential amendment arising from removal of Article 44 and Schedule 9 (see items 8 and 11).