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To: The Applicant, all Interested Parties,  
Affected Persons, Category 3 Persons

Our Ref: EN010137

Date: 8 November 2024

Dear Sir/ Madam

## **Planning Act 2008 – sections 89 and 123; and The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 – Regulations 5-19**

### **Procedural Decision following request to make changes to the application**

We are writing to inform you of the Procedural Decisions made by the Examining Authority (ExA) following a notification of intention to submit a change request dated 29 October 2024 [AS-028] and a subsequent change application made by the Applicant dated Friday 1 November 2024 [CR1-001]. It is regrettable that, given the limited time between the change notification and the change application, the ExA were unable to consider the notification properly and provide advice on the procedural implications of the proposed change prior to the submission of the change application in line with The Planning Inspectorate's guidance<sup>1</sup> (the PINS Guidance). Nonetheless, this letter sets out the ExA's Procedural Decisions in relation to the change application.

### **The change application**

The change application comprises of 5 changes which the Applicant considers engages The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regs). In support of the application, the Applicant has submitted a series of documents which have been published under the 'Documents' tab on the [project website](#).

The proposed changes are briefly set out below, whilst a more detailed description and justification for each change can be found in the Applicant's Change Request Report (CRR):

- Change 1: The amendment of the proposed Order Limits to include an existing access track and parcel of land to the west of the onshore substation for temporary

<sup>1</sup> <https://www.gov.uk/guidance/nationally-significant-infrastructure-projects-changes-to-an-application-after-it-has-been-accepted-for-examination#process-for-requesting-a-change-to-an-application>

construction access during onshore site preparation works and construction of the onshore substation and surrounding works;

- Change 2: The amendment and widening of the onshore substation construction access road to aid Abnormal Indivisible Load (AIL) movements, including an amendment to the proposed Order Limits;
- Change 3: The amendment of the proposed Order Limits to include additional land adjacent to the onshore substation construction access bellmouth to accommodate a temporary construction drainage attenuation basin;
- Change 4: The amendment and widening of the proposed Order Limits to include land needed to accommodate an area of hardstanding during the construction period to allow establishment of the permanent access road; and
- Change 5: The amendment and widening of the permanent access road adjacent to facilitate AIL movements.

As set out in the PINs Guidance, upon receipt of a request to make a change to an application, the ExA must initially consider whether the development now being proposed is, in substance, the same as the development which was originally applied for. The ExA must also consider if the combined impact of a series of incremental changes, may collectively result in a materially different project.

The PINs Guidance also states that the ExA must consider the impact of the proposed change on the Interested Parties (IPs) and anyone that could be affected. In relation to additional Compulsory Acquisition (CA) powers, the PINs Guidance states that if the Applicant is requesting a change which would require additional CA powers, they must obtain consent for the inclusion of those additional powers from all persons with an interest in the additional land, as per the CA Regs. If the Applicant is not able to obtain this consent before they request the change to the application, then regulations 5 to 19 of the CA Regs would be engaged.

If the ExA considers that the effect of the change would not be so substantial as to constitute a materially different project, the change may be accommodated as part of the Planning Act 2008 (PA2008) examination process provided that the ExA considers there is sufficient time remaining. In addition to the above, the ExA will also take into consideration the guidance set out in the Planning Act 2008: Examination stage for Nationally Significant Infrastructure Projects dated April 2024 (the Examination Stage Guidance).

## **ExA's reasoning and decision in relation to the Change Application**

### **Change 1**

Change 1 involves the temporary possession of land but no acquisition of land or rights. On this basis the CA Regs are not engaged, and the procedural requirements of those regulations do not need to be met.

However, the CRR is not clear and is somewhat contradictory on the reason for the inclusion of this land and its intended use. Therefore, the ExA is unable to provide further advice on Change 1 until the Applicant has provided more clarity on the matters below:

- Could the Applicant explain why the proposed change is necessary if being utilised for onshore preparation works only?

- Paragraph 1.2.13 of the CRR states that it would be used to take access for Work Nos. 21, 22, 23 and 31. However, Paragraph 1.2.1.6 states that it would be used for temporary access to Work Nos. 21-24, 27, 29, 32, 33 and 26. Can the Applicant clarify which Work Nos it is seeking access for?
- The CRR states that the access would be used for onshore preparation works only such as time critical surveys. Paragraph 1.2.1.8 then states that use of this access would reduce the need for contractors to track equipment around the onshore substation from the temporary construction compound and laydown areas (Work Nos. 23, 24 and 25) to implement the necessary works around the west and south of the onshore substation platform. Can the Applicant confirm what is meant by paragraph 1.2.1.8?
- Is proposed Change 1 solely for onshore preparation works and can the Applicant confirm that it would not be used during construction? How would the Applicant propose securing this in the DCO?
- Section 2.9 states that this would only be used for 12 months and only by 4x4 vehicles and that daily movements would be de minimis. How would the Applicant propose securing this in the DCO?
- Does the Applicant propose on submitting the assessment of access and road safety it states that it has carried out?

Please note that should the Applicant confirm that the use of the track and additional land would be used for onshore preparation works only, for the specified time and by 4x4s only and the ExA is satisfied that this would be secured in the DCO, then the advice given below for Changes 2-4 would also be applicable to Change 1.

## **Changes 2 to 4**

Changes 2-4 involve the temporary possession of land but no acquisition of land or rights. On this basis the CA Regulations are not engaged, and the procedural requirements of those regulations do not need to be met.

The ExA agrees that the proposed changes are not so material as to constitute a materially different project either alone or collectively and the proposed changes are not considered to lead to the Proposed Development being different in nature or substance to that which was originally accepted.

However, in light of the changes proposed, and in the absence of compelling evidence that demonstrates all known directly affected parties are aware of the changes, in order to act reasonably and fairly and in accordance with the principles of natural justice, reasonable and proportionate non-statutory consultation should be carried out by the Applicant before the change request can be accepted. For the purposes of non-statutory consultation, the ExA requests that such consultation should:

- Include a publication in a local newspaper only (i.e. not a national newspaper);
- Involve a targeted consultation zone based on the area surrounding the proposed onshore substation site and proposed accesses;
- Involve writing to relevant prescribed consultees (including Statutory Undertakers) that have an interest/responsibility relating to Changes 2-4; and
- Publish, for the purposes of non-statutory consultation, an updated CRR.

In addition, the ExA requests that the Applicant should:

- Write to all known land interests identified in relation to any land affected by Changes 2-4; and
- Run the consultation for a minimum of 15 days.

Before the change application can be accepted and following the non-statutory consultation, the Applicant is asked to submit the following at Deadline 5:

- a statement encompassing a non-statutory consultation report, and which;
  - Provides a copy of the CRR issued to inform the non-statutory consultation.
  - Lists all of the known interests it has written to in connection with changes 2-4.
  - Provides copies of any newspaper notices or site notices.
  - Appends as an annex any consultation responses received.
- updated copies of all documents listed in Table 1.2 of the CRR and copies of the updated documents listed in Table 1.3 of the CRR.

If the Applicant is of the view that it can carry out the consultation set out above within the timeframe set, then it is asked to confirm this. The Applicant must also be aware of the fact that, if the findings from the consultation exercise reveal that the proposed change would result in new or different issues, the ExA may be of the view that it will not have enough time to adequately examine those issues within the current timetable. This will mean that the ExA will, therefore, not be in a position to accept the change request. This is due to the change request being submitted at the later stages of the Examination.

Taking into consideration the nature and scale of the proposed changes, the ExA is of the opinion that the non-statutory consultation proposed is considered to be a reasonable and proportionate approach that will provide meaningful consultation and give parties that may be affected by the proposed changes an appropriate opportunity to engage with the proposed changes. The ExA is of the view that the current Examination Timetable allows sufficient time for any IPs to make submissions in respect of the consequences of the proposed changes.

## **Change 5**

Whilst this change would not result in a change to the Order Limits, it would result in an increase to the area over which powers for permanent acquisition of rights are sought. On this basis, the ExA agrees with the Applicant that the CA regs are engaged.

The Applicant has set out how it considers the CA regs could be complied with in section 1.6 of the CRR including an example timetable for the Examination of the change request which it considers complies with the procedural requirements of the CA regs.

However, having reviewed the CA Regulations and noting that consent of the landowner is not forthcoming, on the facts of this case, the ExA is of the view that the period for Relevant Representations (RR) should not run concurrently with the period for Written Representations (WR), as the Applicant suggested, so as to ensure that no one is prejudiced by the Examination process. Whilst the CA Regs do state that the ExA can at any time specify the date for which a WR must be received, it also states that any new Affected Person (AP) or Interested Party (IP) should be given 21 days to make a WR.



Accordingly, any additional IP, for example, who was to submit a RR at the end of the RR period would be missed and would not have the full amount of time necessary in which to prepare and submit WRs. This would have implications for natural justice.

Taking the above into account, it does not appear that there is sufficient time within the Timetable to move the deadline for WRs to 21 days after the RR period, allowing for publication of WRs and then allowing parties sufficient time to comment on any WRs. There would also be insufficient time to give notice and hold any hearings which may be required. The ExA is therefore of the opinion that there is insufficient time remaining in the Examination to accommodate the procedural requirements of the CA Regs within the time constraints.

Therefore, in order for the ExA to accept Proposed Change 5, the Applicant would need to provide evidence that all persons (Category 1 and 2) with an interest in the land consent to the proposed provision.

## **Next Steps**

As per the PINs Guidance, the ExA will decide whether to accept or reject the change application for Changes 1-4, after it has considered the consultation responses and any other representations made on this matter.

If you have any questions about the content of this letter, please contact the Mona Offshore Wind Farm Inspectorate Case Team on:  
[monaoffshorewindproject@planninginspectorate.gov.uk](mailto:monaoffshorewindproject@planninginspectorate.gov.uk)

Yours faithfully

*Caroline Jones*

**Caroline Jones**  
**Lead Member of the Examining Authority**

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