



Morven Hawthorn Pit Grid Connection Project

Preliminary Environmental Information Report

Draft DCO: Explanatory Memorandum

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Table of contents

1	Introduction	1
2	Table styles	2
2.2	Deemed Marine License.....	3
3	Structure and Scope of the Draft DCO	4
3.1	Part 1 – Preliminary	4
3.2	Part 2 – Principle Powers.....	4
3.3	Part 3 – Streets	5
3.4	Part 4 – Supplemental Powers	5
3.5	Part 5 – Powers of Acquisition	5
3.6	Part 6 – Miscellaneous and General	6
4	Schedules.....	7
4.1	Schedule 1 – Authorised Development	7
4.2	Schedule 2 – Requirements	7
4.3	Schedule 3 – Discharge of Requirements	8
4.4	Other Schedules	8

1 Introduction

- 1.1.1.1 Morven Offshore Wind Limited (hereafter the '**Applicant**') is promoting the Morven Hawthorn Pit Grid Connection Project (the '**Project**').
- 1.1.1.2 The Secretary of State for Energy Security and Net Zero ('**SoS**') has made a direction under section 35 of the Planning Act 2008 (the '**2008 Act**') that the Project is development which is nationally significant and for which development consent is required. As such, the Applicant will make an application (the '**Application**') for a development consent order ('**DCO**') under section 37 of the 2008 Act.
- 1.1.1.3 The Applicant is undertaking consultation on its current proposals for the Project and has prepared a Preliminary Environmental Information Report ('**PEIR**') and associated documents, including a draft development consent order ('**dDCO**'), to inform the consultation.
- 1.1.1.4 This note provides an explanation of the structure, content and scope of the dDCO. It is not a draft of the explanatory memorandum, which is required to be submitted alongside the dDCO as part of the Application.
- 1.1.1.5 The dDCO includes a number of 'square bracketed' ([]) holds as well as text in italics. It also includes blank schedules. This represents work which is ongoing and will be included within the dDCO submitted with the Application. There are also 'fill in bullets' ([•]), which note points of detail to be added either by the Applicant to the dDCO (such as numerical values) or later by the SoS if the DCO is made (the '**Order**') (such as the year of making and the date of coming into force).
- 1.1.1.6 Updates will be made to the dDCO following consultation, to address feedback provided through consultation, ongoing engagement with key stakeholders, and the outcomes of further environmental assessment work. A revised dDCO will be submitted with the Application for development consent, as well as an explanatory memorandum, environmental statement, and other statements, reports, plans and figures as required under the 2008 Act.

2 Table styles

- 2.1.1.1 A DCO is a statutory instrument which authorises the construction and operation of a nationally significant infrastructure project, as defined in the 2008 Act, or a project determined by the SoS to be of national significance and for which development consent is required in accordance with section 35 of the 2008 Act, as is the case for the Project.
- 2.1.1.2 The Project will be a transmission connection from the Morven North Offshore Wind Array Project or the Morven South Offshore Wind Array Project in Scottish waters, to the National Grid Hawthorn Pit Substation in County Durham, England.
- 2.1.1.3 The Applicant is seeking a DCO to authorise the construction, operation and maintenance of the English components of the Project, being the offshore export cables in English offshore and inshore waters from the jurisdictional boundary with Scottish waters, to landfall in County Durham; onshore export cables from landfall connecting to an Onshore Land Substation ('LSS'); alternating current ('AC') connection cables from the LSS to the National Grid Hawthorn Pit Substation, and associated development.
- 2.1.1.4 The components of the Project in Scottish offshore waters do not form part of the Application and will be consented separately by application to the Marine Directorate – Licensing Operations Team ('MD-LOT') for marine licence(s) in accordance with the Marine and Coastal Access Act 2009 (the '2009 Act'). The Morven North and Morven South Offshore Wind Array Projects in Scottish waters will also be consented separately; applications have been made to MD-LOT for section 36 consent under the Electricity Act 1989 (the '1989 Act') along with associated marine licence applications under the 2009 Act.
- 2.1.1.5 Part 1 of Schedule 1 of the dDCO describes the authorised development for which development consent is sought. This is referred to throughout the dCO as either the 'authorised development' or by individual work numbers, which collectively comprise the authorised development. The work numbers are split into works occurring offshore, works between mean high water springs ('MHWS') and mean low water springs ('MLWS'), and works onshore, landward of MHWS.
- 2.1.1.6 Part 2 of Schedule 1 of the dDCO sets out the 'associated development', being development necessary for or in connection with the construction and operation of the authorised development.
- 2.1.1.7 Part 3 of Schedule 1 of the dDCO sets out the 'ancillary works', comprising works that do not fall within the meaning of 'development' in accordance with the 2008 Act, but which are necessary to bring the Project forward.
- 2.1.1.8 Schedule 1 of the dDCO is the equivalent of the description of development within a planning permission. It should be read alongside the draft works plans that show the indicative locations of the proposed works. Following consultation, updates may be made to the draft works plans to refine the works areas and the final locations shown on the works plans, to be submitted with the Application.
- 2.1.1.9 Schedule 2 of the dDCO sets out the requirements which function in much the same way as conditions of a planning permission. A number of these requirements require the submission and approval of plans or schemes prior to undertaking certain works authorised by the DCO. For example, the requirements will require the approval of design detail for the LSS and associated landscaping and mitigation works before the works to develop the LSS begin.
- 2.1.1.10 The dDCO and the PEIR take a 'Rochdale envelope' approach, which will also be followed in the environmental statement to be submitted with the Application. This means that the maximum design parameters for the Project have been determined, to enable the assessment of a worst-case scenario for each environmental topic. The maximum design parameters and worst-case scenario assessed then translate into the design parameters and required controls set out in the dDCO.
- 2.1.1.11 A DCO may also contain other powers including, for example, powers of compulsory acquisition of land and rights in land. This document explains the proposed structure of and the powers to be contained within the DCO.

2.2 Deemed Marine Licence

- 2.2.1.1 In addition to the DCO, other consents are needed to construct and operate the Project, including a marine licence for works seaward of MHWS within English waters.
- 2.2.1.2 The dDCO will include a deemed marine licence from the Marine Management Organisation ('**MMO**') to undertake the offshore works of the Project, in accordance with section 149A of the 2008 Act and section 65 of the 2009 Act.

3 Structure and Scope of the Draft DCO

3.1 Part 1 – Preliminary

- 3.1.1.1 Part 1 of the dDCO sets out the name of the development consent order (being the 'Morven Hawthorn Pit Grid Connection Project Order') and, if granted, will specify the date on which the DCO comes into force.
- 3.1.1.2 It also sets out the definitions for terms used throughout the dDCO. Some of these definitions are important to understanding the scope of the authorised development. For example, "commence", which distinguishes between offshore and onshore components of the authorised development. For offshore and intertidal works (i.e. activities licensed under the deemed marine licence) "commence" is defined as the first carrying out of those activities, save for specific pre-construction operations. For all other works, "commence" is defined as the first carrying out of any material operation (as defined in the 2008 Act), save for "onshore site preparation works" (which are separately defined in the dDCO).

3.2 Part 2 – Principle Powers

- 3.2.1.1 Part 2 of the dDCO sets out the principal powers to be granted by the DCO. Article 3 provides for the granting of the development consent itself, for the authorised development (including associated development) and ancillary works, to be carried out within the DCO limits.
- 3.2.1.2 The DCO limits are identified on the draft works plans. The DCO limits are the physical limits within which the development must be carried out.
- 3.2.1.3 Article 4 provides for the grant of the deemed marine licence. Article 5 provides the power to maintain the development.
- 3.2.1.4 Whereas planning permissions commonly run with the land to which they relate and are not specific to one developer, DCOs are restricted to the specific developer (called the 'undertaker') who has been granted that permission. The Applicant is named as the undertaker in the dDCO. Article 6 (benefit of the order) provides that the benefit of the DCO only applies to the undertaker, subject to specified provisions governing transfer and leasing of the benefit of whole or part of the DCO (including the deemed marine licence).
- 3.2.1.5 Article 6 provides that where any other party wishes to take on the benefit of the DCO (or part of it), consent from the SoS will be required to transfer or grant the DCO to a transferee or lessee (respectively). This ensures that the SoS can be satisfied before any transfer or grant that the person to whom it is being transferred or granted is a suitable person to operate the Project. Article 6(7) provides that such consent from the SoS is not required where the transferee or lessee is the holder of an electricity licence under section 6 of the 1989 Act, or where in relation to works within a highway the transferee or lessee is a highway authority responsible for the relevant highway, or time limits for claims for compensation in respect of the acquisition of land or effects upon land under the DCO have elapsed and there is no outstanding claim. Article 6 also provides, separately, for the transfer or grant of the deemed marine licence, which requires the SoS to consult with the MMO before providing consent.
- 3.2.1.6 Under the 2008 Act, development consent orders can modify or exclude the application of certain other legislative provisions, including both general and local legislation. Article 7 of the dDCO sets out the provisions of general legislation to be modified or disapplied. This list is subject to refinement following consultation and discussions with any relevant consenting bodies (where the provision to be disapplied would otherwise require a consent, licence or permit separate from the DCO) and may be updated in the dDCO submitted with the Application. The list of relevant local legislation to be modified or disapplied will be included in the dDCO for the Application.
- 3.2.1.7 Article 8 (defence to proceedings in respect of statutory nuisance) extends a defence provided to actions for statutory nuisance under the 2008 Act, to actions brought by individuals and the local authority. Article 8 provides for a longer list of relevant actions to be excluded than may be needed. This will be determined and the list refined following full assessment of the residual environmental effects of the Project in the environmental statement.

3.3 Part 3 – Streets

- 3.3.1.1 This section relates to powers to do works within streets and highways, to carry out temporary diversions, alterations and closures, and to enforce temporary traffic regulations, to facilitate the construction of the Project.
- 3.3.1.2 Article 9 provides authority for the undertaker to carry out works in or under streets to be listed in Schedule 4. This power is necessary to facilitate the installation of the onshore export cables from landfall to the LSS and the AC connection cables from the LSS to the National Grid Hawthorn Pit Substation, and it allows the Project to install cables under streets.
- 3.3.1.3 Article 10 confirms that some of the provisions of the New Roads and Street Works Act 1991 apply to the carrying out of street works under Article 9 and the temporary stopping up, alteration, temporary diversion or restriction of a street under Articles 12 and 13.
- 3.3.1.4 Article 11 sets out requirements for the maintenance of any highway constructed, altered or diverted under the DCO.
- 3.3.1.5 Articles 12 and 13 provide for the temporary closure, alteration or diversion of public rights of way and the temporary restriction on the use of streets, to be listed in Schedule 5.
- 3.3.1.6 Article 14 allows the undertaker to form and lay out means of access, or improve existing means of access, from streets to be listed in Schedule 6.
- 3.3.1.7 Article 15 provides the undertaker with the power to introduce temporary traffic regulation measures, as expedient or necessary for the purpose of or in connection with the construction of the Project, including introducing speed limits, as will be detailed in Schedule 5.
- 3.3.1.8 Article 16 provides the undertaker with the power to alter the layout of streets.
- 3.3.1.9 Article 17 provides for the undertaker to enter into agreements with street authorities relating to any temporary closure, alteration or diversion of a street and the carrying out of any works referred to in Article 9(1) and Article 16.
- 3.3.1.10 On submission of the Application, a full list of the streets and public rights of way that are subject to the relevant powers will be included in the Schedules to the dDCO.

3.4 Part 4 – Supplemental Powers

- 3.4.1.1 Part 4 sets out the additional rights and powers necessary to construct and operate the Project.
- 3.4.1.2 This includes providing for practical matters that may be required for the construction or operation of the Project, such as making connections into drains and sewers for the discharge of water (Article 18) and undertaking protective works to buildings (Article 19).
- 3.4.1.3 It also includes powers that are necessary before construction of the Project commences, such as the authority to survey and investigate land onshore (Article 20).

3.5 Part 5 – Powers of Acquisition

- 3.5.1.1 Part 5 sets out the powers of compulsory acquisition sought by the Project. These are very similar to those which could be included in a compulsory purchase order and would allow the Project to compulsorily acquire land or rights in the land needed for construction and operation, and to extinguish rights or suspend the rights of other parties, where the land to which those rights apply is acquired by the undertaker, or where the continuance of those rights would be inconsistent with the exercise of the compulsory acquisition or temporary possession rights exercised under the DCO.
- 3.5.1.2 Article 22 limits the time when land can be compulsorily acquired to seven years from the date on which the Order is made. The seven year time period has precedent in recently made offshore wind and transmission DCOs including the East Anglia TWO Offshore Wind Farm Order 2022, the Hornsea Four Offshore Wind Farm Order 2023 and the North Falls Offshore Wind Farm Order 2026. A seven-year period is necessary for the Project to retain sufficient flexibility in light of the fact its delivery is interdependent with the delivery of either the Morven North or the Morven South Offshore Wind Farm Array Projects in Scottish waters which are on separate timeframes and subject to separate

regulatory processes from the Project. A seven-year time period is also appropriate due to the complexity and scale of the Project, uncertainties in supply chain availability, and commercial constraints on offshore wind and transmission projects.

- 3.5.1.3 The land which would be affected by such powers, and the extent of any effect, will be detailed in the Application documents, in particular the Book of Reference and land plans.
- 3.5.1.4 DCOs commonly also include powers for taking temporary possession of land to facilitate the carrying out of the authorised development, and in more limited circumstances to facilitate maintenance of the authorised development. This includes, for example, in respect of carrying out the authorised development, powers to enter on or take temporary possession of specified land, remove buildings and other apparatus, construct temporary works, use land for a working site and access, and carry out mitigation works. In respect of maintenance of the authorised development this includes for example the power to enter on or take possession of land, to enter on to land to gain access, and to construct temporary works and buildings on land.
- 3.5.1.5 Compensation is payable for the exercise of compulsory acquisition and temporary possession powers within the dDCO. Article 35 of the dDCO ensures the funding to pay that compensation is secured ahead of any such powers being exercised by the undertaker, in the form deemed appropriate and approved by the SoS.

3.6 Part 6 – Miscellaneous and General

- 3.6.1.1 Part 6 sets out several general provisions which are necessary to ensure that the Project can be constructed and operated as intended.
- 3.6.1.2 Article 38 and Article 39 provide the undertaker with the power to fell or lop trees or shrubs within the Order limits which are obstructing or interfering with the carrying out of the authorised development, or which constitute a source of danger. In addition, Article 38 provides for the removal of specific hedgerows and important hedgerows (to be set out in a Schedule to the dDCO submitted with the Application).
- 3.6.1.3 Article 41 provides that arbitration will be the primary method of resolution for disputes under the Order.

4 Schedules

4.1 Schedule 1 – Authorised Development

4.1.1.1 Schedule 1 sets out the development authorised by the DCO. It is structured in three parts: Authorised development (Part 1), Associated development (Part 2), and Ancillary works (Part 3).

4.1.2 Part 1 – Authorised Development

4.1.2.1 Part 1 has been divided into separate work numbers, and a description is provided of what development each work number comprises. The works include, principally, the offshore export cables, landfall works, onshore export cables, the LSS and surrounding substation area, onshore AC connection cables, connection into the National Grid Hawthorn Pit Substation, an area of search for habitat management and enhancement, and associated temporary construction compounds, trenchless installation techniques and cable trenching, and access works.

4.1.2.2 We would recommend reading this section in conjunction with the draft works plans, which identify the work areas for the offshore, intertidal and onshore elements of the Project.

4.1.2.3 There are currently two sets of works plans – a ‘blue’ option and a ‘green’ option, to illustrate two options for where the LSS and substation area (Work Nos. 8 and 8A) could be located. As such the two sets of works plans illustrate different spatial arrangements for some of the onshore works. The Part 1, Schedule 1 description of the numbered works is the same for both LSS options. The Applicant intends to down-select to one LSS prior to submission of the Application, and so will submit one set of works plans with a confirmed LSS location with the Application.

4.1.3 Part 2 – Associated Development

4.1.3.1 Part 2 of Schedule 1 sets out associated development, which is additional to the numbered works. The associated development is listed once rather than being included for each individual work number.

4.1.3.2 The associated development has been split into offshore and onshore sections. The offshore section includes matters such as cable protection, dredging, removal of material from the seabed, anchoring, and removal of static fishing equipment, which is common associated development to the laying of offshore cables. The onshore section contains common elements such as means of access, landscaping works, works to existing apparatus, the provision and restoration of working sites, fencing, and drainage.

4.1.4 Part 3 – Ancillary Works

4.1.4.1 Part 3 of Schedule 1 sets out ancillary works. These are works which do not constitute development but are necessary to allow the construction of the Project. These include intrusive ground investigations, temporary landing places and moorings, marking buoys, beacons, fenders and other navigational warning or ship impact protection works, and works for the benefit or protection of land, watercourses or structures affected by the authorised development.

4.2 Schedule 2 – Requirements

4.2.1.1 The requirements set out how the Project may be constructed and operated and provide for the approval of certain details after the DCO is made. They function like conditions of a planning permission.

4.2.1.2 Requirement 1 provides that the authorised development must be commenced within seven years of the DCO coming into force.

4.2.1.3 The requirements include several important restrictions. For example, the offshore and onshore elements of the Project will be subject to maximum design parameters, as set out in requirement 2 (offshore) and requirement 5 (onshore). These parameters are currently holds and will be completed in the dDCO for submission of the Application.

- 4.2.1.4 The requirements allow for the onshore elements of the authorised development to be carried out in stages, the details of which must be submitted to the planning authority in advance of the works commencing (requirement 3). As such, the discharge of requirements works in such a way as to allow discharge of a requirement specifically for a particular stage of onshore development, to enable commencement of that stage of the works (as opposed to requiring the discharge of the requirement for all stages before one stage can begin).
- 4.2.1.5 The details of the LSS must be approved by the planning authority in advance of works being carried out, to ensure that matters such as layout, scale, dimensions and external appearance (requirement 4), landscaping (requirements 6 and 7), biodiversity net gain (requirement 16), and operational drainage (requirement 17) are controlled. Prior to the operation of the LSS an operational noise management plan must be approved by the planning authority (requirement 15).
- 4.2.1.6 Requirement 8 secures the provision of, and adherence to, a code of construction practice ('CoCP') to regulate the construction of the onshore works. The CoCP will include details of all elements listed in requirement 8 and must be approved by the planning authority before any onshore works commence.
- 4.2.1.7 Requirement 9 requires the approval of a construction traffic management plan prior to the commencement of the onshore works. Requirement 10 provides that no temporary or permanent means of access to a highway may be formed or altered until a highways access management plan is approved.
- 4.2.1.8 Requirement 11 provides that onshore works may not commence until a written scheme of investigation is approved for the relevant stage of development. Intrusive onshore site preparation works occurring prior to the commencement of the development must be carried out in accordance with the outline onshore written scheme of investigation.
- 4.2.1.9 Requirement 12 requires the approval of an ecological management plan prior to the commencement of onshore works. Pre-commencement site preparation works must be undertaken in accordance with the outline landscape and ecological management plan.
- 4.2.1.10 Requirement 13 requires that no onshore works (other than surveying and investigation necessary to comply with this requirement) can commence until a pre-construction survey has been carried out to establish whether a European protected species or nationally protected species under the Wildlife and Countryside Act 1981 is present on the land affected, or likely to be affected, by the onshore works.
- 4.2.1.11 Requirement 14 requires the restoration of land used temporarily for construction, which is not required permanently for operation.
- 4.2.1.12 Requirements 18 and 19 detail the offshore and onshore decommissioning requirements respectively. Offshore works may not commence until a written offshore decommissioning programme is submitted to the SoS, in accordance with section 105 of the Energy Act 2004. An onshore decommissioning plan for the onshore works must be approved by the planning authority at least six months prior to any onshore decommissioning works commencing.

4.3 Schedule 3 – Discharge of Requirements

- 4.3.1.1 Schedule 3 sets out the procedure of the discharge of the requirements in Schedule 2, including the process for applications, requests for further information from the discharging authority and consultees, fees, and appeals.

4.4 Other Schedules

- 4.4.1.1 In the dDCO submitted with the Application, several other schedules will be included as follows:
- Schedules 4, 5 and 6 – lists of all streets and public rights of way which will be affected by the powers within the DCO, and details of traffic regulation measures.
 - Schedules 7, 8 and 9 – detailing the application of the compulsory acquisition and temporary possession powers sought under the DCO.
 - Schedule 10 – the deemed marine licence.

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- Schedule 11 – lists of the hedgerows and any important hedgerows subject to removal.
 - Schedule 12 – documents to be certified in the DCO.
 - Schedule 13 – arbitration rules
 - Schedule 14 – protective provisions in favour of particular affected parties, such as statutory undertakers.