



## Meeting note

<b>File reference</b>	EN010021 – Dogger Bank (Creyke Beck) and EN010051 Dogger Bank Teesside
<b>Status</b>	FINAL
<b>Author</b>	John Pingstone
<b>Date</b>	16 April 2013
<b>Meeting with</b>	Forewind
<b>Venue</b>	Temple Quay House
<b>Attendees</b>	<u>Forewind</u> Melissa Read - Consent Manger – Dogger Bank Creyke Beck Andrew Guyton - Consent Manager – Dogger Bank Teesside Gavin Clark - Creyke Beck Project Manager Nikki Young - Stakeholder Manager  <u>Planning Inspectorate</u> Jessica Potter (Principal Case Manager) Lynne Franklin (Legal Manager) Laura Allen (Senior EIA Advisor) John Pingstone (Assistant Case Officer)
<b>Meeting objectives</b>	Project update meeting on Dogger Bank Creyke Beck, including provision of consultation documents. Update on Dogger Bank Teesside.
<b>Circulation</b>	All Attendees

### Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) explained its openness policy and the commitment to publishing any advice under Section 51 of the Planning Act 2008 (the Act). It was confirmed that the Inspectorate is unable to give legal advice on which developers or others can rely and that developers should seek their own legal advice.

#### Dogger Bank Creyke Beck

Forewind suggested that submission of the application for Dogger Bank Creyke Beck to the Inspectorate was now likely to be at the end of August 2013.

The Inspectorate was given copies of various documents in hard copy including the consultation report and draft Environmental Statement (ES) non-technical summary. Copies of various documents were also supplied on CD.

The Inspectorate queried whether the project had changed between the two phases of consultation. Forewind said that various elements of the projects had been refined, for

example the position of the converter station had been fixed, along with the location of the cable landfall.

#### ES - Ornithology

Forewind discussed their approach to the ornithological elements of the environmental assessment. They stated that they have taken a very precautionary approach in regard to avoidance rate and collision risk.

#### ES - Marine Mammals

Forewind stated that they are working towards a Marine Mammal Mitigation Protocol which would be agreed prior to construction. The Inspectorate asked whether this would be included in the Development Consent Order (DCO) and Forewind confirmed that this was the case.

Forewind confirmed that they are working on a SoCG with the Statutory Nature Conservation Bodies (SNCBs) in regard to effects on Marine Mammals.

#### ES - Landscape & Visual

The Inspectorate queried whether all of the land necessary for mitigation of visual impact for the onshore infrastructure would be within the order limits. Forewind confirmed that this was the case.

#### ES - Tourism

Forewind discussed the impact of the proposal on tourism, including on the Beverley 20 walking route. The Inspectorate queried whether the Beverley 20 route would be subject to compulsory acquisition and if so whether the land could fall under the definitions in s131-138 of the Planning act 2008 (PA2008). Forewind suggested that they would need to consider this further including whether the land fell under any of the special categories described in the PA2008.

#### Habitats Regulations Assessment (HRA)

Forewind provided an update on progress with HRA matters and explained that they were actively sharing data on HRA matters with other Round 3 wind farms.

The Inspectorate said that it would endeavour to review the draft HRA report, with a particular focus on the project description and mitigation.

Forewind confirmed that they will be working toward a Statement of Common Ground (SoCG) with Natural England and JNCC. The Inspectorate suggested that it is important to keep documenting any negotiations and agreement with the SNCBs and to report this in the application documents, such as in the Consultation Report or HRA Report.

#### Draft DCO - Feedback

The Inspectorate gave feedback on the draft DCO that had been supplied prior to the meeting.

There was some discussion of the drafting of definitions set out in the Interpretation section of the DCO. The Inspectorate explained that in light of recent Secretary of

State decisions, it is important that the applicant sets out a sufficiently clearly defined project within the DCO. It was emphasised that this is an area that may be explored during the examination.

It was suggested that the definitions of 'platforms' and 'combined platforms' are looked at again to ensure internal consistency with other parts of the DCO.

The Inspectorate suggested that the definition of 'Gravity Base Foundation' could benefit from greater clarity in its parameters and perhaps a design based requirement as it appeared that the definition appears to focus on a description of its function rather than its physical features.

The Inspectorate suggested that Forewind should carefully consider the definition of maintain and any maintenance provisions within the DCO in the context of emerging practice on live applications. The meaning of maintenance should ordinarily be constrained to what has been assessed in the ES.

The Inspectorate queried the inclusion of both permanent and temporary workers accommodation within the DCO. The Inspectorate pointed out that if this is associated development the construction of a dwelling would be ruled out under s115(2) of the PA2008 and hence this point will need to be carefully explained in the Explanatory Memorandum.

The Inspectorate pointed out that in regard to total cable length, cable armouring and scour protection, there did not appear to be any design parameters set within the DCO to limit the maximum extent of the works. It was suggested that the MMO in particular would benefit from these parameters as they need to know the precise extent of the scheme in order to consider if an additional Deemed Marine Licence may be required. It was pointed out that Forewind should consider whether it would be possible to articulate the worst case scenario assessed in the ES by requirement in the DCO.

The Inspectorate suggested that Forewind should have regard to the Growth and Infrastructure Bill, as when it is passed it will have a bearing on the certification process for particular types of land under s127-138 of the PA2008. Forewind hoped that no compulsory acquisition of special category land would be required.

The Inspectorate pointed out that in Article 3(4) - works no. 2BA and 2BC are drafted as alternatives, however, this is not clear elsewhere in the DCO for example in Schedule 1 (authorised project). It was queried whether the project to be constructed is sufficiently clearly defined, and whether those options would remain open after the application had been submitted. Forewind stated that they had not yet been able to determine the optimum cable route due to ongoing commercial negotiations and they could not be certain that agreement would be reached prior to submission. The Inspectorate advised that any options presented in the submitted draft DCO should be clearly explained in the Explanatory Memorandum.

In regard to Article 8 (Transfer of benefits of the Order), it was suggested that Forewind may find it useful to review the approach in the draft DCO for the Thames Tideway Tunnel application (which proposes disapplication of Part 4 of the Marine and Coastal Access Act 2009 in relation to variation of a deemed marine licence) although to note that the provision will be subject to examination.

The Inspectorate enquired about the number of protective provisions. Forewind suggested that it was unlikely that any would be added, but that it was likely that some would be removed.

In regard to Article 36 and the power to make agreements, the Inspectorate queried why this Article had been included. In previous DCOs it was thought that this power had only applied to public bodies and that agreements between private bodies had been dealt with through standard commercial agreements outside of the DCO. It was suggested that Forewind consider whether this is in the power of the Act and whether it is necessary and proportionate. Also it is important that it is explained in the Explanatory Memorandum.

Article 41 describes a number of Deemed Marine Licenses as the generation and transmission elements of the 2 NSIPs each require a license. The Inspectorate queried whether there needed to be any requirements that would fix or limit the ability to vary DMLs or to link DMLs. Forewind stated that they would consider this.

In regard to Sch 1 Part 1 works no. 1A and 1B, the Inspectorate advised that it may help to clarify the project description if the indicative range of generating capacities of individual turbines was specified. Forewind suggested that they would consider adding this.

The Inspectorate queried whether any overhead lines were being applied for. Forewind confirmed that there were no overhead lines in the development.

The Inspectorate queried whether there could be two construction periods, caused by the separation between cable 'A' and cable 'B'. Forewind confirmed that this was a possibility, and that the assessment in the ES had taken this into account and was based on the worst case.

The Inspectorate asked whether Forewind intended to apply for any Exclusion zones. Forewind stated that they did intend to, but that this was not yet finalised.

In regard to Requirement 7 (layout rules) the Inspectorate queried how these are enforced. Forewind stated that they were still working on this with statutory consultees such as the MCA.

In regard to requirement 41 (subsequent approvals) the Inspectorate pointed out that this is normally limited to what has been assessed in the ES. Forewind will consider this.

#### Draft Consultation Report – Feedback

The Inspectorate pointed out that in regard to Table 2.1, it is stated that a s46 notice was submitted on 3 December 2011 and also states that a s46 notice will be submitted on 16 April 2013. S46(2) of the PA2008 states that the applicant must comply with subsection (1) on or before commencing consultation under s42, in which case as s42 consultation has already commenced the s46 notice cannot be submitted again.

Also in regard to Table 2.1, Table 4.1 and paragraph 6.2.3 it was noted by the Inspectorate that the IPC/Planning Inspectorate is classed as a consultee. As the Inspectorate is not a body that is classified within any of the categories in ss42-48 of the PA2008, it cannot be consulted. Therefore, it was suggested that for reasons of clarity that Forewind should consider removing the Inspectorate from these lists.

The Inspectorate queried whether, in Table 2.1, the distinction drawn between EU and EEA states was an error. Forewind confirmed that this was a deliberate distinction. It was also pointed out in regard to Table 2.1 that HRA consultation could be more clearly set out.

In regard to Table 3.1 the Inspectorate noted that Hull City Council had been classified as an 'A' authority under the definitions in s43 of the PA2008, whereas on the Regulation 9 list compiled by the IPC for the purposes of Environmental Impact Assessment scoping, the Council had been classified as a 'B' authority. Forewind confirmed that this reclassification had been caused by alterations to the project in the time period between the two lists.

Within paragraph 3.4.1 the Inspectorate pointed out that there was some confusion between s44 and s42(1)(d) of the PA2008. Forewind confirmed that this would be clarified.

At paragraph 4.1.3 the Inspectorate noted that the Report states *"Over the course of the pre-application period, Forewind refined its approach to community consultation and carried out additional consultation, above and beyond the commitments made in the SoCC."* It was queried whether the additional consultation is clearly set out. Forewind will consider this.

Paragraphs 6.1.2 and 6.1.3 of the Consultation Report appear to make contradictory statements and would benefit from being clarified.

In regard to paragraph 6.2.1 the phrase *"Formal non-statutory consultation"* is used. The Inspectorate noted that Paragraph 52 of the DCLG guidance (2013) associates formal consultation with statutory consultation and that this is the typical way in which the terms have been used in previous applications. Forewind suggested that they would amend this usage.

The Inspectorate queried whether Appendix 8 (Copy of the Published SoCC) would include the newspaper notices as well as a copy of the SoCC. Forewind confirmed that this was the case, and that as the SoCC had been published prior to the changes enacted by the Localism Act 2011, that a copy of the entire SoCC had been published rather than just information on where it could be accessed.

Forewind queried whether it was necessary to submit all consultation responses. The Inspectorate confirmed that this was not necessary, as DCLG guidance states that summaries are adequate. Forewind should however be mindful that the Inspectorate has the power to request copies of all consultation responses during the acceptance period if necessary.

### Dogger Bank Teesside

Forewind are anticipating that the Teesside 'A & B' application will be submitted in Q2 2014 application with Teesside 'C & D' following a year later. Formal consultation is likely to commence in October 2013.

There is one ES for Teesside 'A & B' and a separate ES for 'C & D'. The Inspectorate queried whether it would provide greater clarity if the planning portal's National Infrastructure website reflected the distinction between the 'A & B' and 'C & D' projects, so that each project had a separate project page. Forewind agreed that this would be a reasonable approach and agreed to consider whether there would be any

implications for their previously issued s46 notification, EIA scoping request and Statement of Community Consultation. The Inspectorate agreed to await confirmation from Forewind before changing the project details. The Inspectorate advised that it is for the applicant to decide whether any additional EIA scoping is required.

### General

The Inspectorate informed Forewind that it is now standard practice to ask the applicant to fill in a spreadsheet that lists the application documents. It was agreed that the Inspectorate would send this template to Forewind.

The Inspectorate requested that the Habitats Regulation Assessment matrices are populated and that on submission they are provided in MS Word format in order that they can be edited throughout the examination.

Forewind suggested the possibility of drafting an 'FAQ' document that would attempt to pre-empt those questions that had frequently been asked on previous applications. The Inspectorate suggested that this approach was acceptable but that it was perhaps more helpful if those questions are answered within the normal suite of documents.

Forewind asked if it would be helpful if they completed a copy of the s55 checklist that is used by the Inspectorate during the acceptance period. The Inspectorate suggested that this was a good approach as it allowed the applicant to check the application as a whole before submission and assists in signposting to documents for ease of reference.

Forewind queried whether the plans listed under Regulation 5(l) and (m) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 could be supplied within the ES rather than as separate plans. The Inspectorate agreed that it was reasonable to include them in the ES.

The Inspectorate asked whether it would be helpful if monthly teleconferences were held. Forewind agreed that this would be helpful and suggested that it could also be helpful to discuss zone wide issues. Forewind agreed to schedule a date in mid May for the first teleconference.

In regard to the East Anglia ONE application Forewind said that due to an oversight they had not registered as an Interested Party and therefore would not be able to take part in the examination should they wish to. The Inspectorate noted this and informed Forewind that the acceptance of any representations would be at the discretion of the examining authority.

### **Specific decisions / follow up required?**

The Inspectorate to consider whether any additional written comments on the draft DCO were required to be provided following the meeting.

Forewind to confirm when it is ready for the Inspectorate to amend the website to reflect the separation between Teesside 'A & B' and 'C & D' projects.

### ***Post Meeting Comments on the DCO***

*Article 32 - for applications made on or after 25 June 2013 certification from the relevant Secretary of State (responsible for the statutory undertaker) will*

*not be required in circumstances where (in summary) representations from a statutory undertaker are made and not withdrawn in relation to land or apparatus. The tests under s127 (eg that land can be purchased and not replaced without detriment) will still however need to be met and ExAs will need to be satisfied about this when making their recommendation to the SoS about whether to include the article in the DCO.*

*Article 35 - as above, for applications made on or after 25 June 2013 certification under ss131 and 132 from the relevant Secretary of State will not be required to avoid SPP in circumstances where (for example) replacement land is given in exchange for common land or open space compulsorily acquired. It's noted that you don't consider that special category land is affected by this scheme but if so, and the SoS is satisfied that the tests under s131 (or s132) are met, this fact will need to be recorded on the DCO and article 35 amended accordingly.*

*Article 43 - notwithstanding the protections which this article gives to Crown rights, as the Crown can't consent to any interest of its own being acquired compulsorily Crown interests should still be excluded from compulsory acquisition either through article 20 and the definition of the Order land or in the book of reference plot descriptions (for example by use of the words "except interests held by or on behalf of the Crown"). Provisions which provide for compulsory acquisition of any interests in Crown land held otherwise than by or on behalf of the Crown will require the consent of the appropriate Crown authority. Note also that consents from the appropriate Crown authority should be obtained for DCO provisions which apply in relation to Crown land (s135 (2)). This is a complex area and we would strongly recommend that you obtain legal advice at an early stage to identify what Crown authority consents are required and ensure that the appropriate consents are procured in the absence of which a DCO can't be made.*