



## Meeting Note

<b>File reference</b>	<b>EN010021</b>
<b>Status</b>	<b>Draft</b>
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<b>Meeting with</b>	<b>Forewind Limited ('Forewind')</b>
<b>Meeting date</b>	<b>15 November 2012</b>
<b>Attendees (Planning Inspectorate)</b>	<b>Sheila Twidle (Head of Environmental Services) Lynne Franklin (Lawyer) Jessica Potter (Principal Case Manager) Laura Allen (Senior EIA and Land Rights Advisor) Jeffrey Penfold (Case Officer) John Pingstone (Assistant Case Officer)</b>
<b>Attendees (non Planning Inspectorate)</b>	<b>Nikki Smith (Stakeholder Manager) Andrew Riley (Onshore EIA Manager – Creyke Beck) Melissa Read (Consents Manager – Creyke Beck) Andrew Guyton (Consents Manager – Teesside) Stephen Collings (Partner, Eversheds)</b>
<b>Location</b>	<b>Temple Quay House</b>

<b>Meeting purpose</b>	<b>Update on Dogger Bank Yorkshire (Creyke Beck) and Teesside Applications</b>
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<b>Summary of key points discussed and advice given</b>	<p>Forewind began by summarising their progress to date and future intentions. It is planned that the 2<sup>nd</sup> round of consultation will begin in February 2013, and the Dogger Bank (Creyke Beck) application is likely to be submitted in June 2013.</p> <p>The Teesside application is approximately a year behind, with submission likely in Q1 2014.</p> <p>Forewind are considering their consents strategy, including the number of eventual Development Consent Order (DCO) applications.</p> <p><b><u>DCO</u></b></p> <p>Forewind pointed out that wherever possible they have attempted to follow the model provisions set out in The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. They explained that they understood that it is not mandatory to follow these provisions; however they were of the view that they should be the default position. The Planning Inspectorate (The Inspectorate) suggested that it would be helpful if a version of the DCO could be submitted with the application which clearly showed, via 'track changes', where a</p>
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deviation had been made from the model provisions. Forewind responded that they can do so if it would assist The Inspectorate.

The Inspectorate queried why Forewind had chosen to include two Nationally Significant Infrastructure Projects (NSIP) under one application, and whether this was primarily an Environmental Impact Assessment (EIA) or Habitats Regulation Assessment (HRA) consideration. Forewind responded that one of their considerations was that providing one conduit for the cable would minimize land take. In addition, two different Examining Authorities (ExA) could, potentially, reach different conclusions. Thirdly it was suggested that a single application makes it easier to engage with the public when carrying out consultation. Forewind responded that the reasoning behind this approach would be explained within the Explanatory Memorandum.

The Inspectorate raised an issue concerning the definition of 'authorised development' contained in Article 3 of the DCO. The Inspectorate advised that Forewind's approach to the Rochdale Envelope should be set out clearly in the Explanatory Memorandum which accompanies the draft DCO. The Inspectorate also suggested that Forewind may wish to have regard to current Offshore Wind Farm applications going through examination, where the ExA had in some cases raised questions regarding the parameters used to assess the EIA, including for example consideration of cable-armouring.

The Inspectorate queried the definition of 'undertaker' provided within Part 1 (Interpretation) by reference to s156. . Forewind pointed out that the intention behind the wording was to take into account the possibility of benefits being transferred, however it was agreed that this would benefit from clearer drafting.

With regard to Article 8, in connection with Marine Licences, The Inspectorate queried whether this is a statutory right or provision, and asked whether the Planning Act 2008 (as amended) (the PA 2008) permits transfer of the Marine Licence. Forewind suggested that the PA 2008 can confer the power to do so, but will also provide explicit wording in addition to Model Clause 5 to clarify this.

A discussion was held regarding Forewind's approach to applying for Marine Licences. Forewind considered that one approach may be to include two or more separate deemed Marine Licences within a draft DCO. The Inspectorate agreed that in principle this should be possible but it would require attention to detail in the drafting.

The Inspectorate pointed out that this is a live issue, and that Forewind may be interested to read the MMO's position as set out in a representation dated 2 November 2012, submitted to the ExA on the Triton Knoll offshore wind farm examination. The intention of the PA 2008 is to streamline the process of obtaining

various consents and licences, and to take the approach of obtaining the marine licences separately would not be consistent with the spirit of PA 2008.. If there is no alternative Forewind stated that it may be necessary to apply to deem four separate Marine Licences within one DCO.

In regard to Article 9, The Inspectorate queried whether Forewind had any specific legislation in mind. It was suggested that canal and railway legislation could be disapplied if a cable-crossing was required.

Article 15, concerning Public Rights of Way was briefly discussed. At this stage it has not yet been determined which Rights of Way may require stopping up or diversion. Forewind confirmed that this Article is currently incomplete, but will be completed depending on the conclusions drawn in the ES.

In respect of Article 35, The Inspectorate asked whether the development would require compulsory acquisition of any land belonging to Statutory Undertakers, with reference to s127 and s138 of the PA 2008. Forewind suggested that 50 to 60 plots would be needed, but that they are in the process of negotiating agreement with landowners.

**ACTION:** Forewind will confirm the nature and extent of the land subject to Compulsory Acquisition when this information is available.

The Inspectorate raised the issue of Special Category Land contained in Article 38, and explained that should s131 of PA 2008 be engaged any request for a certificate from the relevant Secretary of State should be clearly articulated in the application documents..

The Inspectorate questioned whether Forewind had given any consideration to recent developments on other NSIP applications concerning the definition of 'maintain', contained within the 'Interpretation' section in Part 1. The MMO have been concerned with the use of the words 'remove' and 'replace' within the definition. They are of the view that the inclusion of this terminology may give an applicant too wide a scope in which to rebuild the project during the operational phase.

In regard to Article 4, concerning limits of deviation, Forewind clarified that these limits only apply to the onshore works. It was suggested that the project would employ narrow limits (a narrow envelope) for both the conduit corridor (36m), the convertor substations and National Grid works. The vertical deviation of the cable corridor cannot be finalised at this stage as it is a design and functional point. The Inspectorate then queried what level of detail would be shown on the onshore works plans. Forewind replied that the works plans would show maximum

extent of works and for above ground work (the convertor substation) maximum height, and indicative apparatus, but that the development may take place at any position within those limits.

The Inspectorate asked whether the Landscape Strategy (draft Requirement 26) would require certification. Forewind will look into this.

It was agreed that Forewind will provide an updated version of the draft DCO to the Inspectorate prior to the submission of the application and once the works plans are finalised to enable The Inspectorate to provide a more detailed response on the draft DCO.

The Inspectorate asked whether the draft DCO had been shared with any other consultation bodies. Forewind confirmed that it had been shared with the MMO although no detailed discussions have taken place. It had not been seen by the host onshore local authority (East Riding of Yorkshire), though the intention is to provide a draft copy of the DCO shortly for comment. The Inspectorate suggested that any bodies potentially named in the DCO or marine licence, such as the Maritime and Coastguard Agency and Trinity House, may also wish to review the draft DCO at the pre-application stage.

A discussion was held concerning the benefits of submitting Statements of Common Ground (SoCG) prior to the examination stage. Forewind suggested that they were looking to submit any SoCG as soon as possible, but that they were unlikely to find full agreement with the relevant bodies until the DCO application has been accepted for examination. The Inspectorate made the point that SoCG submitted early in the process can aid the ExA in narrowing down the issues, which can reduce the number of issues raised during the examination. It was also pointed out that if a SoCG has not yet been finalised, it may be helpful for the applicant, in agreement with the relevant body, to provide a position statement, letter of comfort or meeting notes with the DCO application, setting out what has been agreed or is still outstanding between the parties. Forewind agreed to give this approach due consideration.

### **EIA/HRA**

A brief update was given by Forewind on the current position concerning EIA and HRA matters. An HRA Screening Report has been sent to JNCC, Natural England, DECC, Major Infrastructure Environment Unit (MIEU) and Transboundary consultees.

The Inspectorate gave a summary of best-practice concerning HRA. Forewind were informed that The Inspectorate' HRA advice note (Number 10) has recently been updated. The revised advice

note explains the process that is recommended to be followed by applicants in submitting their HRA.

The Advice Note includes a set of matrices that has been developed by The Inspectorate to assist the relevant SoS as competent authority in fulfilling the requirements of the Habitats Directive and the Habitats Regulations in the context of the PA 2008 Act process. These matrices are developing best practice and may be revised in light of experience. As relevant, these matrices should be appended to the applicant's HRA report. The ExA will use the information provided in these matrices to inform their initial assessment of the principal issues. If the relevant matrices have not already been provided with the application documents, they will be requested from the applicant by the ExA as part of the first round of questions.

The Planning Inspectorate, on behalf of the ExA, will revise the initial matrices using the evidence gathered throughout examination which will be presented as a 'Report on the Implications for European Sites' (RIES). Consultation on the RIES will be undertaken during the examination period with all interested parties. The RIES together with the responses to questions and all matters relating to HRA issues will form part of the evidence base for the ExA report and recommendation to the SoS.

It was emphasised by The Inspectorate that it is important for applicants to try to seek agreement with Statutory Nature Conservation Bodies (SNCB) as early as possible in the DCO process. Provided they have the capacity to do so, The Inspectorate will look at draft HRA reports and matrices, and shadow appropriate assessments and provide comments.

**ACTION:** Forewind to send the HRA Screening Report to The Inspectorate for comment.

The Inspectorate questioned how the Transboundary information will be presented. Forewind suggested that a chapter of the Environmental Statement (ES) will summarise the Transboundary Consultation, which will include consultation with both the relevant States and other bodies such as fisheries organisations. The transboundary consultation undertaken will also be documented in the Consultation Report.

### **Consultation**

Forewind explained their approach to s42 consultation. The intention is to carry out s42, s47 and s48 consultation in such a way that each strand of consultations concludes on the same day. Consultation under s42 will begin in February 2013, which will give 7-8 weeks to comment. The main consultation document will be the draft ES, which would include a non-technical

summary. Other documents may be sent out (such as the design and access statement) in a targeted manner. Documents will be available either in hard copy or email. S48 consultation will comprise a newspaper advertisement, and s47 will be carried out via a series of public exhibitions. The period in which responses to the consultation will need to be taken into account under s49 will be quite short prior to submission, and for this reason late comments are unlikely to be able to be taken into consideration.

The Inspectorate raised the possibility of local government elections during the consultation period, which may hamper the ability of Local Authorities to respond to any consultation. Forewind agreed that this is something they would look into.

It was raised by Forewind that Hornsea Offshore Windfarm would also be consulting during this period. However they did not consider this to be a problem as it should be clear that this is a distinct project, and the host onshore authority is North East Lincs DC as opposed to East Riding of Yorkshire.

The Inspectorate voiced concerns that given the proximity of consultation to submission of the DCO application, there would only be a short period within which to revise the application based on consultation responses. Forewind are mindful of this, and intend to begin revisions as the consultation responses are submitted as opposed to waiting for the end of the consultation.

Forewind asked The Inspectorate whether, under the provisions of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, it would be necessary to provide a comprehensive list of libraries where the documents are available for inspection, within the s48 notice.

The Inspectorate pointed out that the Consultation Report needs to ensure that the Data Protection Act 1998 is satisfied, with regard to the contact information of consultees.

**ACTION:** The Inspectorate to respond to Forewind in writing regarding the consultation report, s48 notice, and associated issues

### **Outreach**

The outreach event held by The Inspectorate at the offices of East Riding of Yorkshire Council was discussed. The major issue to arise from the event was the Council's concerns about resourcing. Forewind confirmed that they were aware of the issue and are in the process of agreeing a Planning Performance Agreement (PPA) with East Riding of Yorkshire Council and Redcar and Cleveland Borough Council. Overall it was felt that the event was received well and had been a useful exercise.

## **Consultation Report**

An outline version of the Consultation Report was provided to The Inspectorate for comment. The Inspectorate suggested that it is important that Forewind take into account that the readership are likely to be unfamiliar with the development, and would therefore benefit from an introduction which sets out in clear terms the historical context and basic elements of the proposal.

It was suggested by The Inspectorate that the Consultation Report would benefit from a compliance page in order to satisfy paragraph 96 of the CLG pre-application consultation guidance. It would be helpful if this was provided in a tabulated format.

The rationale behind the structure of the report was discussed. The Inspectorate queried in particular why Forewind had chosen to provide a separate section concerning Fisheries Liaison consultation, and why this could not have been included within the non-statutory consultation section. Forewind suggested that a specific consultation had been carried out for Fisheries Liaison, but that they would reconsider the structure of the report to ensure that it was as clear as possible to the reader.

Further to the above it was suggested by The Inspectorate that Section 11 (concerning how consultation has informed the proposals) may benefit from being placed at the beginning of the report.

The Inspectorate raised some discrepancies in the parties detailed on the consultation list. For example Local Authorities did not appear on the list. In addition The Inspectorate emphasised that Forewind should explain in the Consultation Report where the list is different from the Regulation 9 list provided by The Inspectorate.

Forewind queried whether the Dogger Bank Creyke Beck Regulation 24 (Transboundary Notification) notice in the London Gazette should be reissued, as the notice describes a single array of 1.4GW, which was correct at the scoping stage, but no longer accurately describes the development.

The Inspectorate were of the view that Transboundary Consultation is an ongoing issue, and that the differences in the scheme are not so significant that any additional states or bodies would wish to comment. It was confirmed that The Inspectorate would not be reissuing the notice.

Forewind queried whether they should submit an updated Regulation 6 notification (to inform The Inspectorate that an ES will accompany the application). The Inspectorate confirmed that this would not be necessary.

Forewind asked The Inspectorate whether the ES could be

presented in a 'Flipbook' format. The Inspectorate asked for written clarification of the details of that format in order to ensure that it complies with our normal requirements. Forewind agreed to provide details via email, if this approach is to be taken.

The Inspectorate asked whether Forewind had had any difficulties engaging with any consultation bodies. It was explained that the MOD had not responded to their consultation, and had informed them that they were not resourced to. The Inspectorate suggested that Forewind keep a record of efforts to engage.

### **Teesside Application**

Forewind set out the current position of the Teesside proposal. They submitted a scoping request in May-June 2012. The intention is to submit the DCO application in Q1 2014. A meeting was held with Local Councillors in October 2012 introducing the project.

The possibility of a Planning Performance Agreement (PPA) is being considered.

The project may be split between 1, 2 or 4 DCOs. Agreement has been sought for 2 grid connections, and there are likely to be 4 converter stations on 2 plots.

Forewind are currently considering how best to split the DCO applications. In the event that more than one application is sought, each application will be supported by a Environmental Impact Assessment .

Forewind raised the possibility of a joint meeting with MIEU to discuss HRA matters. The Inspectorate agreed that they could attend such a meeting.

Forewind mentioned that a s.53 request may be submitted to The Inspectorate, on behalf of the SoS, before Christmas for one area of land for which permission is sought to gain access for the purpose of undertaking environmental surveys.

### **Lessons Learned**

Forewind asked The Inspectorate to point out any 'lessons learned' from other applications that may be useful to consider when submitting the application for Dogger Bank. he Inspectorate suggested:

Try and reach agreement early with key statutory consultees, preferably at the pre-application DCO stage, as the examination is an intensive process, particularly when there are many outstanding issues. If agreement cannot be reached, set out clearly why it cannot be reached, ideally in a SoCG.



	<p>ExAs have asked questions about maintenance and operation ports and construction bases, Whilst each development will be examined on its own facts it is worthwhile bearing in mind these areas of information which have been helpful in examination of off shore windfarms.</p> <p>Even if there is little or no knowledge of these matters when the DCO application is submitted, the 'worst case' effects, for example on traffic and transport, should have been assessed. Some other offshore wind applications are seeking to deal with this by means of a Requirement in the DCO related to subsequent approval of a Construction Code of Practice document.</p> <p>It can be helpful if applicants fill in our s55 (acceptance checklist). Doing so can aid the applicant in ensuring that they have met our acceptance requirements.</p>
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<b>Specific decisions/ follow up required?</b>	<p>The Inspectorate to circulate any outstanding meeting notes..</p> <p>The Inspectorate to respond with detailed written s51 comments on the draft consultation report.</p> <p>Next meeting (Creyke Beck only) in February 2013, date to be agreed.</p>
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<b>Circulation List</b>	All attendees
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