

Hornsea Project One Deadline 1 Submission



SUMMARY

1 INTRODUCTION

1.1 This document is submitted for Deadline 1 in relation to the Hornsea Project Two Examination, jointly on behalf of Heron Wind Limited ("Heron"), Njord Wind Limited ("Njord") and Vi Aura Limited ("Vi Aura"). The three companies are collectively referred to as the "Project One Companies". The undertakers in relation to the Project Two Order (Optimus Wind Limited and Breesea Limited) are referred to in this Representation as the Applicants or the Project Two Companies.

2 STATUS OF THE PROJECT ONE COMPANIES

2.1 Heron, Njord and Vi Aura are the three named undertakers under the Hornsea One Offshore Wind Farm Order 2014 (the "Project One Order"). The project consented under this Order is referred to as "Project One".

2.2 Each of the Project One Companies holds a generation licence under section 6 Electricity Act 1989 and is a statutory undertaker.

2.3 Heron holds all of the onshore land interests in relation to Project One. There are 282 plots (out of 522) in the Project Two Order where rights (temporary and permanent) are sought by Project Two over land within the Project One Order Limits. Accordingly, Heron is an affected party as well as an interested party.

2.4 This representation also constitutes a representation for the purposes of section 127 Planning Act 2008 on behalf of Heron.

2.5 This submission also engages section 138 Planning Act 2008 in relation to Heron, given the rights vested in or belonging to Heron in relation to its undertaking as a statutory undertaker. These rights take the form of agreements with landowners and lessees, or rights conferred under the Project One Order for the construction and maintenance of apparatus forming part of Project One.

3 BACKGROUND

3.1 Heron and Njord are owned 100% by DONG Energy Wind Power A/S ("DONG Energy"). Vi Aura is owned 100% by Heron.

3.2 DONG Energy was a minority shareholder in Heron and Njord until February 2015 when it took full ownership of Project One. SMart Wind Limited acted as agent for the Project One application but from February 2015, no longer has any involvement with Project One. DONG Energy has no legal interest in Project Two. Accordingly, the two projects are entirely at arm's length and are being promoted separately.

4 STATUS AND DEVELOPMENT TIMETABLE FOR PROJECT ONE

4.1 The Project One Order came into force on 31 December 2014. The Project One Companies applied for a correction order which came into force on 1 May 2015.¹ Project One has also been awarded a Contract for Difference by the Department for Energy and Climate Change under the Final Investment Decision Enabling for Renewables process. The Contract for Difference enables the financial support mechanism that will facilitate Project One to be constructed. The Contract includes certain milestones and commits the project to a specific development programme.

¹ The Hornsea One Offshore Wind Farm (Correction) Order 2015.

Project One is fully committed to meeting that programme and multiple workstreams are being taken forward ranging from detailed project optimisation, onshore and offshore procurement, through to preparation for the discharge of detailed requirements under the Project One Order and conditions under the deemed Marine Licences.

- 4.2 By contrast, Project Two is still at an early stage and is running to a significantly later timetable. Importantly, it does not have a Contract for Difference. It will have to bid in a future Contract for Difference round against other offshore wind projects and other types of electricity generating project. There is no guarantee that it will secure a Contract for Difference.

5 EXISTING LEGAL AGREEMENTS BETWEEN PROJECTS ONE AND TWO

- 5.1 There are three legal agreements in place between relevant companies concerning the relationship between Project One and Project Two going forward, the details of which are commercially confidential.
- 5.2 Two other agreements, dated November 2013 and April 2014, relate principally to the onshore substation for Project One. The latter agreement envisaged the negotiation of a fully comprehensive onshore and offshore cooperation agreement between the two projects by Q4 2014, which would supersede the three agreements just mentioned. This agreement is still under negotiation, and is being taken forward as two confidential agreements – an onshore cooperation agreement and an offshore cooperation agreement.

6 THE CROWN ESTATE

- 6.1 Agreements for Lease are in place with The Crown Estate Commissioners in relation to the entire Project One turbine array areas. These provide for the exercise of an option to take leases over the seabed areas which constitute the consented array area for the Project One Order. They also provide for the grid connection to the shore from each lease area. These agreements are commercially confidential.

7 APPROACH TO RESOLVING ISSUES BETWEEN PROJECTS ONE AND TWO

- 7.1 Section 9 of the Project Two Order Cable Statement (Document 11.2) deals with "Interfaces between Project One and Project Two". The Cable Statement explains the close proximity, and partial overlap, between the two projects. It correctly states that there are a number of areas and issues, both offshore and onshore, where the interests of the two projects may conflict unless there is agreement between them.
- 7.2 There are two mechanisms by which conflict between Project One and Project Two can be resolved – by commercial agreement or by means of the final provisions of the Development Consent Order, assuming it is granted.

Compulsory acquisition and Statutory Undertakers

- 7.3 In addition to the tests under section 104, where powers of compulsory acquisition are sought, the Secretary of State is also obliged to consider the tests for compulsory acquisition, which are set out in the Statement of Reasons and are not repeated here. This is particularly the case where another NSIP has already secured powers of compulsory acquisition as is the case here. Furthermore, where a statutory undertaker is affected by proposed compulsory acquisition, the Secretary of State must consider the "serious detriment" test under section 127 and the test under section 138 that the impact on the statutory undertaker is "necessary".
- 7.4 Whilst the manner of resolving matters in the absence of agreed cooperation agreements have been explained, the Project One Companies are working towards an outcome where fully testing those issues in the Examination can be avoided and these representations can be withdrawn as part of an agreed package with Project Two.

8 OVERLAP OF ORDER LIMITS - ONSHORE TEMPORARY AND PERMANENT WORKING AREAS AND COMPOUNDS

- 8.1 There are a number of locations identified within the Project Two Work Plans where there is a complete overlap and, as a consequence, possession proposed for the usage of temporary working areas. This is particularly clear at the onshore substation site.
- 8.2 There is an area of proposed permanent acquisition of part of the Project One substation area. This should either be removed, or made subject to Protective Provisions which mean that land/rights can only be acquired with Project One's consent.
- 8.3 **Proposed solution:** The Project One Companies require the removal of Plots 503, 505, 507 and the northern part of Plot 506 (shown separately on Overlap Plan 1) from the Development Consent Order and the Book of Reference.
- 8.4 The Project One Companies require suitable Protective Provisions to be included within the Development Consent Order in relation to the other Plots where there is overlap between the powers sought for Project One and Project Two and/or for the relevant matters to be dealt with under a confidential cooperation agreement between the two projects.
- 8.5 The mechanism for the Compensation Compounds needs to provide sufficient certainty and control to Project One in the event that it is triggered. The provisions on the face of the Development Consent Order may require some amendment and may need to be supplemented in a confidential cooperation agreement.

9 CONNECTION INTO KILLINGHOLME SUBSTATION

- 9.1 There are three new generating stations seeking to connect into Killingholme substation - Project One, Project Two and North Killingholme Power Project (promoted by C.GEN North Killingholme Limited). Project One's current proposal is to begin works for the onshore substation in January 2016. In light of this Heron is in discussion with the Applicant and with C.GEN in relation to the routing of cables to the Killingholme substation.
- 9.2 **Proposed solution:** The solution proposed in relation to Project Two has already been addressed in Section 8 i.e. a commercially confidential cooperation agreement and/or Protective Provisions. The C.GEN position has been explained by way of background as it does not require further measures in connection with the Project Two application from Project One's perspective.

10 INTERTIDAL ACCESS

- 10.1 The interaction between the two projects during construction and maintenance must be controlled to ensure that the delivery of services to Project One is not adversely impacted.
- 10.2 **Proposed solution:** The Project One Companies require Protective Provisions to be included within the Development Consent Order or a confidential cooperation agreement (which is under negotiation) which will provide confidence that the detailed design of the route of the export cable (and associated equipment) and their subsequent construction can proceed in a timely manner without unacceptable interference from Project Two. The Protective Provisions will also need to enable the operations and maintenance of the circuits once installed are protected from unacceptable interference from the construction, operation and maintenance of any Project Two circuits

11 OVERLAP OF ORDER LIMITS - PERMANENT INFRASTRUCTURE OFFSHORE

- 11.1 The export cable area for Project Two crosses the consented wind farm array area for Project One. The Cable Statement explains that this is intended to allow for the possibility of a shorter grid connection for the north eastern area of Project Two. Such a

route would, however, have substantial adverse consequences for Project One and consequently Project One must be specifically protected under the Project Two Order.

- 11.2 The offshore export corridor for Project Two overlaps with that already consented for Project One. The interaction between the two projects during construction and maintenance must be controlled to ensure that the safe and timely delivery of Project One is not adversely impacted.
- 11.3 **Proposed solution:** The Project One Companies would strongly prefer that consent is not granted for export cables to run across the Project One array area and that Works 4A and 4B are revised accordingly. If, however, that is not accepted, then the Project One Companies require a confidential cooperation agreement (which is under negotiation) that Protective Provisions are included in the Development Consent Order which give the Project One Companies the ability to approve the detailed arrangements for the interface between Project One and Project Two during the construction, operation and maintenance of the projects.

12 PROJECT TWO BUFFER AREA AND WAKE EFFECTS

- 12.1 If Project Two is constructed up to the Order Limits there will be wake effects which will impact Project One. This has been recognised in the 4 indicative layouts included in the Project Description (Figure 3.5) forming part of the Environmental Statement. Each of these layouts shows a buffer zone (area of no turbine installation) along the full length of the boundary with Project One. This is not however reflected in Project Two's Development Consent Order submission. Project One requires a provision in the Project Two Order which prevents the construction of turbines within the buffer area unless otherwise agreed by Project One. For the avoidance of doubt Project One will require a cooperation agreement in relation to these impacts.
- 12.2 **Proposed Solution:** The Project One Companies require a suitable confidential cooperation agreement (which is under negotiation) and/or Protective Provisions to be included within the Development Consent Order which will provide confidence that Project Two must agree to the scale of a wake loss mitigation buffer. The exact scale and position of the wake loss mitigation buffer will be agreed by way of a confidential cooperation agreement between Project One and Project Two.

13 PROXIMITY OF PROPOSED PROJECT TWO DREDGED DISPOSAL AREAS TO PROJECT ONE TRANSMISSION ASSETS

- 13.1 The Project Two Order includes the designation of specific areas within the offshore Order Limits as disposal areas for dredged spoil generated during construction. These areas are located within the shared export cable corridor and the Project One Companies are concerned that these activities are controlled to ensure that they will not adversely affect the Project One transmission assets offshore.
- 13.2 **Proposed solution:** A suitable confidential commercial cooperation agreement (which is under negotiation) or Protected Provisions should specify Project One agreement of disposal plans (and any relevant technical studies that evidence these plans) prior to issue to the Marine Management Organisation detailing location, methods and timings of dredging and disposal. It is also necessary that disposal monitoring and control requirements are agreed with Project One in advance of Project Two cable installation. In addition, Project One require a Project One representative on board the vessels engaged in Project Two dredging/disposal activities to ensure disposal takes place only in agreed locations.
- 13.3 In the event that it is necessary for Project Two to dispose material over the Project One cables only sand is permitted to be disposed over the cables and this should not be done without prior agreement from Project One.
- 13.4 In the case of clay and boulders only material from cable route clearance and trenching should be disposed of within the cable corridor (but not over Project One cables). The

clay should, wherever possible be used to backfill the trenches and the boulders can only be disposed of clear of any cables in accordance with a proximity agreement which must be drafted and agreed before disposal of boulders can take place.

- 13.5 Material from other operations i.e. wind turbine generator and offshore substation ground preparation or drilling cannot be disposed within the cable corridor.

Burges Salmon LLP

15 July 2015