

Hornsea Offshore Wind Farm

Project Two

The Applicant's Summary of Oral Case from DCO Hearing on 30 July 2015

Appendix A to the Response submitted for Deadline II

Application Reference: EN010053

10 August 2015

smartwind.co.uk

**SUMMARY OF ISSUE SPECIFIC HEARING ON THE DRAFT DEVELOPMENT
CONSENT ORDER HELD ON 30TH JULY 2015
SUBMITTED FOR DEADLINE II**

1.	Welcome
----	---------

- 1.1 Following an introduction from the Ex. A, the Applicant, along with other parties in attendance, introduced its representatives.

2.	Project A and Project B
----	-------------------------

Apportionment

- 2.1 The Ex. A sought clarification on the structure of the overall Project, and the relationship between Project A and Project B within that structure.
- 2.2 The DCO has been structured to allow Project A and Project B to be built out as separate projects. The Authorised Development described at Part 1 of Schedule A of the DCO is structured in such a way to authorise Project A works (e.g. Works No. 1A, 2A etc) separately to Project B works (e.g. Works No. 1B, 2B etc) and then to impose cumulative totals to ensure the overall maximum Project parameters are not exceeded by a combination of both Project A and Project B. This ensures that the Project remains within the Rochdale Envelope assessed in the ES. With regards to the apportionment between Project A and Project B below the maximum parameters which have been assessed, there are a number of different scenarios for final Project design including the possibility of the Project being built out as a single project.
- 2.3 It would not be prudent at this stage to try and set out the different variants of the final Project design. The apportionment between Project A and Project B will be determined by a number of technical and commercial factors post-consent and prior to construction, including advancement of technologies, general market conditions and the process of Contracts for Difference and Electricity Market Reform. Flexibility on delivery is therefore essential to ensure that the Project is capable of delivery and can find a route to market without requiring any post consent applications for variations to be submitted.
- 2.4 Regardless of the different variants the worst case scenario has been fully assessed. The final Project design will be constrained by these maximum parameters so that impacts will be no greater than that which have been assessed in the ES and will, in all likelihood, be less. The Applicant considers that this provides sufficient security to control the flexibility sought within the draft DCO.
- 2.5 There are also mechanisms in place within the draft DCO to ensure that, when further information on Project design is known, that this is fully communicated to the necessary authorities at the time of discharging the requirements of the DCO and the conditions of the DMLs, prior to construction of either Project A or Project B.
- 2.6 Apportionment will be reflected in the plans and documents to be prepared by the undertaker for each project and submitted to the local planning authority for approval prior to construction under the requirements contained in Part 3 of Schedule A of the draft DCO.
- 2.7 Furthermore, apportionment will be clearly reflected in the pre-construction plans to be prepared by each undertaker and submitted to, and approved by, the MMO under Condition 10 of the DMLs. These pre-construction plans include the layout plan (Condition 10(1)(a)) which will set out the proposed location and specification of all aspects of the authorised scheme, thus clearly showing where the works proposed to be carried out under that DML will be located.

- 2.8 In addition, the co-operation requirements contained at Requirement 21 of Part 3 of Schedule A of the draft DCO and Conditions 10(3), (4) and (5) of the DMLs require the undertakers under the DCO to share copies of the pre-construction plans with one another prior to submission to the MMO for approval and for any comments received from the other undertaker to be submitted to the MMO alongside the plan for approval. The MMO will therefore be able to approve plans with full knowledge of the other undertaker's views in relation to the apportionment set out in those plans and in light of any previously approved plans under the other DMLs.
- 2.9 It will therefore be at this stage (i.e. post consent but pre-construction) that the areas and responsibilities of the undertaker under the relevant DML will be more clearly defined.
- 2.10 The Applicant is currently considering whether the mechanism for co-operation between undertakers in relation to the submission of pre-construction plans (as detailed at paragraph 2.8 above) could be extended onshore. The Applicant will provide a further update in relation to this matter in its response to Deadline IIA.

Compulsory Acquisition

- 2.11 The powers of compulsory acquisition ("CA") contained in the DCO are not split between the undertakers, but are exercisable by either undertaker. This structure is necessary to allow for the powers of CA to be apportioned post-consent when the Project design has been refined and it is understood what land each undertaker will require for Project A or Project B.
- 2.12 In light of the structure of the Project it would not be appropriate to subdivide the order plans between the two undertakers.
- 2.13 As noted at Appendix I of the Applicant's response to Deadline I, the Applicant has exchanged options with approximately 80% of the freehold/leasehold owners and approximately 86% of occupiers of the land required for the Project's onshore cable route (equating to around 84% of the length of the route). These voluntary land agreements have been entered into by Optimus, but with provision for the freedom to transfer to another group company (for the avoidance of doubt of which Breesea is one).

3.	Definition of Completion
----	--------------------------

- 3.1 The Applicant is considering the request from the Ex. A to include a definition of "completion" in the draft DCO. The Applicant will seek to provide a further update in respect of this in its response to Deadline IIA.
- 3.2 The Applicant is not however aware of any other consented DCO for an offshore wind project containing a definition of "completion".

4.	Disapplication of legislative provisions
----	--

Disapplication

- 4.1 Article 3 of the draft DCO seeks the disapplication of legislative provisions for consents which, for the purposes of the Project, would otherwise be required from the Environment Agency, North East Lindsey Drainage Board, Lindsey Marsh Drainage Board, North Lincolnshire Council Lead Local Flood Authority (LLFA), Lincolnshire County Council LLFA and North East Lincolnshire Council LLFA under the Water Resources Act 1991 or the Land Drainage Act 1991.
- 4.2 As noted in the response to question DC2 in the Applicant's response to Deadline I, the Environment Agency, Lindsey Marsh Drainage Board, North East Lindsey Drainage Board, North Lincolnshire Council LLFA, Lincolnshire County Council LLFA and North East Lincolnshire Council LLFA have all agreed to the Protective Provisions contained in Part 1 of Schedule L to the draft DCO and have all consented to the disapplication of the legislation listed

in Article 3 of the draft DCO to the extent that they would otherwise be required to grant consent under the legislation. The letters of consent to the disapplication of the legislation received from each of these authorities can be found appended to the updated Consents Management Plan, which was submitted at Appendix H of the response to Deadline I.

Associated British Ports

- 4.3 The Applicant is seeking to engage with ABP to understand their concerns and obtain their consent to the disapplication of the Humber Conservancy Acts. The Applicant did however draw the Ex. A's attention to the differing terms of section 120 and of the Planning Act 2008 and of section 150. Section 120 of the Planning Act 2008 states that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted..
- 4.4 Section 120(5) states that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order and may make such amendments, repeals or revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order.
- 4.5 The disapplication of section 25 of the Humber Conservancy Act 1852, section 9(ii) (licences for execution of works) of the Humber Conservancy Act 1899 and section 6(2) (no erections in the Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905 in Article 37 of the draft DCO is therefore permitted by Section 120 of the Planning Act 2008.
- 4.6 Section 150 of the Planning Act states that an order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 sets out at Part 1 of Schedule 1 the consents that are prescribed for the purposes of Section 150.
- 4.7 None of the consents disappplied in Article 37 of the draft DCO which would normally be granted by Associated British Ports (ABP) are prescribed for the purposes of Section 150 and therefore the consent of ABP is not required to their disapplication within the draft DCO. As noted above however the Applicant is seeking to engage with ABP in relation to this matter and would prefer to obtain their consent.
- 4.8 In order to try and reach agreement with ABP the Applicant has included protective provisions in Part 5 of Schedule L of the draft DCO for the benefit of ABP. These provisions follow the provisions that were included in the Hornsea Project One DCO and among other things, provide for the prior approval of plans and particulars of works that are within ABP's jurisdiction (paragraph 47). Provision is made for the work to be carried out in accordance with the approved plans and to the reasonable satisfaction of ABP (paragraph 47). There is also provision for an officer of ABP to watch and inspect the construction work (paragraph 49). Notice will require to be given to ABP prior to commencing works and following completion of the works (paragraph 48). In addition, provision is made for the indemnification for costs relating to the examination and approval of plans, the inspection of the work and measures to prevent or remedy danger or impediment to navigation or damage to property arising from construction or the failure of works (paragraph 53).

Hedgerows

- 4.9 The Applicant is considering the Ex. A's comments regarding section 120 of the Planning Act 2008 and the Hedgerow Regulations 1997 and will seek to provide a further update in respect of this in its response to Deadline IIA.

5.	Phasing of the Project
----	------------------------

- 5.1 The Ex. A queried how the Project will be phased, particularly in light of the construction of Project A and Project B.
- 5.2 The Applicant referred the Ex. A to the Multiphase Construction Schedule which was submitted at Appendix O of its response to Deadline I. As explained more fully at section 2 above, below the maximum parameters of the Project design there are a number of different scenarios for how Project A and Project B will be built out. In its DCO Application the Applicant is seeking consent which permits flexibility within these parameters (its Rochdale Envelope). This Rochdale Envelope has been fully assessed on a worst case scenario basis. The maximum worst case scenarios for all potential phases of the construction of the Project (Project A and Project B) including sequential construction are set out in the Project Description (PINS Doc Ref 7.1.3) and as described in the relevant sections of each chapter of the ES.
- 5.3 The Applicant notes that the Ex. A has asked for a further version of the Multiphase Construction Schedule in its Rule 17 Letter dated 4 August 2015 (“the Rule 17 Letter”). The Applicant will therefore seek to provide the information requested by the Ex. A and further clarity on phasing of the Project in its response to Deadline IIA.

6.	Hornsea Project One
----	---------------------

Construction

- 6.1 As explained more fully at paragraph 6.5 of the Statement of Reasons (PINS Doc ref 6.1), in the event of a simultaneous or overlapping construction programme between the Project and Hornsea Project One or in the event that the Project is constructed prior to the commencement of construction of Hornsea Project One, compensation compounds may be required to reduce the impacts of the Project on Hornsea Project One. Whether the powers of CA sought in the draft DCO relating to the compensation compounds are exercised is therefore dependent on the construction timetables of both projects.
- 6.2 It is not however possible for the provision of compensation compounds within the draft DCO to be refined on the basis of any up-to-date details of Hornsea Project One’s construction timetable. Construction timetables are subject to a number of outside factors and the timetables can (and often do) change.
- 6.3 The Project and Hornsea Project One are two distinct projects. The Applicant has no control over the construction timetable for Hornsea Project One. Any attempt to pin certainty on a specific construction timetable for Hornsea Project One in the draft DCO would pose a significant risk to the Project, including unfairly hindering the Project’s construction perhaps indefinitely.
- 6.4 At the hearing legal representation for the Hornsea Project One Companies confirmed that Hornsea Project One had no issue in principle with the compensation compounds approach which the Applicant has put forward.

Matters of Co-operation

- 6.5 The Ex. A raised a number of questions relating to the interfaces of the Project with Hornsea Project One. The Applicant confirmed that it is in discussions with the Hornsea Project One Companies to seek to agree confidential co-operation agreements and it is hopeful that all matters between the parties can be resolved by virtue of these agreements. The Applicant further refers the Ex. A to its comments at paragraphs 12.2 and 12.3 below.
- 6.6 The Applicant will provide a further update to the Ex. A in respect of co-operation with the Hornsea Project One Companies in its response to Deadline IIA.

7.	SSSI Consent and the Intertidal Area
----	--------------------------------------

SSSI Consent

- 7.1 Natural England have advised that, under Section 28 of the Wildlife and Countryside Act 1981 (as amended) (“WCA”), the Applicant will require Site of Special Scientific Interest (SSSI) Consent to access the intertidal area over the lifetime of the Project.
- 7.2 Natural England have also advised that the DCO should specify that under the WCA a management scheme for the lifetime of the Project to undertake operations and maintenance activities should be agreed with Natural England prior to construction and secured as a condition in the DCO.
- 7.3 It is the Applicant’s position that the undertaker will need to comply with the relevant provisions of Section 28 of the WCA in any event since it is a statutory requirement and therefore there is no need for a separate requirement or condition in the DCO as this would result in duplication of statutory provisions, which is not good practice.

Intertidal Area

- 7.4 The Applicant is considering the concerns which have been raised by Natural England regarding inspection in the intertidal area during the overwintering period and hopes to provide a further update in respect of the Applicant’s position in its response to Deadline IIA.

8.	Compulsory Acquisition
----	------------------------

CA powers contained in the draft DCO

- 8.1 The powers contained in Article 18 of the draft DCO for the Project are limited to two plots, being plots 500 and 506 by virtue of the operation of Articles 18, 19 and 26. The Applicant would refer the Ex. A to its response to Question CA2 in its response to Deadline I.
- 8.2 The CA powers sought in the draft DCO for the onshore transmission infrastructure are principally sought by permitting the undertaker to acquire rights in land as set out in Article 19 of the draft DCO. Article 19 permits the undertaker to acquire rights by creating them and to acquire rights already in existence.
- 8.3 The Ex. A has queried the interaction between Article 19 of the draft DCO and the land included within Schedule G of the draft DCO for temporary possession. The Applicant notes that the Ex. A has asked specific questions in relation to this point in its Rule 17 Letter. The Applicant will therefore provide a substantive response to the specific points raised in the Rule 17 Letter in its response to Deadline IIA.
- 8.4 The Applicant can confirm that all of the plots listed in Schedule G are contained in the Book of Reference.

Size and Shape of Certain Plots

- 8.5 At the Hearing the Ex. A raised a high level query regarding the irregularity of the size and shape of certain plots of land as shown on the Land Plans (PINS Doc Ref 4.1) (Version 2 of the Land Plans was submitted as Appendix F to the Applicant’s submission of 27 April 2015).
- 8.6 The plots comprising the Order land have been developed with necessary regard to land conditions on the ground where plots of land are not laid out in perfect grids and often have irregular features such as rounded edges. In addition land assembly for the Project has been carried out in consultation with various landowners taking into account their requests for inclusion of certain formations of land for land management purposes.

- 8.7 The Applicant will be happy to provide further information in relation to any specific plots if required by the Ex. A, including at the compulsory acquisition hearing currently timetabled to begin on 17th September 2015.

Article 4(1)

- 8.8 The Applicant is considering the Ex. A's reference to the minor amendments which the Secretary of State made to Article 4(1) of the Hornsea One Offshore Wind Farm Order 2014. The Applicant will seek to provide a further update in respect of this in its response to Deadline IIA.

Article 35(4)

- 8.9 The Applicant is considering the Ex. A's reference to a possible typographical error in Article 35(4) of the draft DCO. The Applicant will seek to provide a further update in respect of this in its response to Deadline IIA.

9.	Crown Consents
----	----------------

- 9.1 The Applicant is not seeking to exercise compulsory acquisition over any interests held by the Crown however it was seeking powers of compulsory acquisition of interests in Crown land held by third parties.
- 9.2 A summary of the position in relation to Crown consents is set out in the table below. The Applicant notes that the Ex. A has requested further information on Crown consents in its Rule 17 Letter. The Applicant will therefore provide a further update in relation to Crown consents in its response to Deadline IIA.

Party	Status
The Crown Estate Commissioners	The Applicant is engaged with The Crown Estate Commissioners to obtain consent under section 135(1) and 135(2) of the Planning Act 2008. The Applicant notes that The Crown Estate Commissioners responded to Deadline I to confirm to the Ex. A that they were happy with the wording of Article 39 of the DCO.
The Secretary of State for Defence	The Secretary of State for Defence has provided consent under section 135(1) and 135(2) of the Planning Act 2008. A copy of this letter of consent is contained at Appendix B to the Applicant's response to Deadline II.
The Secretary of State for Transport	The Applicant understands that some of plots held by the SoSfT transferred to Highways England as a result of s15 of the Infrastructure Act 2015 and a Transfer Scheme from SoSfT to Highways England. However at the Land Registry all of the titles for the plots remain registered to the SoSfT. As such, legal ownership in respect of these plots remains with the SoSfT and only beneficial interest has passed to Highways England. In light of this, the Applicant is seeking to obtain consent from SoSfT in respect of all of the plots which remain registered to him at the Land Registry, regardless of whether any beneficial interest passed to Highways England. The Applicant is also engaged with Highways England in respect of these matters.

	The Applicant notes that beneficial ownership of Plot 272 has passed to North East Lincolnshire Council as highways authority. Legal title to Plot 272 remains with the SoSfT and the Applicant will seek Crown consent from SoSfT in respect of it. North East Lincolnshire Council are in any event an affected person for the purposes of the Application, including as an Occupier of Plot 272.
Highways England Historical Railways Estates	The Applicant is engaged with Highways England Historical Railways Estates to obtain consent from HRE (on behalf of the Secretary of State for Transport) pursuant to section 135(1) and 135(2) of the Planning Act 2008. The Applicant also intends to seek consent from the SoSfT in respect of this interest to remove any residual ambiguity.
Government Pipelines and Storage System of the Oil and Pipelines Agency	The Applicant notes that the Ex. A queried whether Crown consent would be obtained in respect of this interest. As confirmed in its response to Question CA16 in its response to Deadline I, the ownership of the GPSS pipeline transferred to CLH Pipeline System (CLH-PS) Limited on 30 April 2015. As such, the Applicant is no longer seeking Crown consent in respect of this interest.

10.	Protective Provisions
-----	-----------------------

- 10.1 At the Hearing the Applicant provided the Ex. A with an update on the position in agreeing protective provisions with a number of parties. The current position in respect of those protective provisions is briefly summarised in the table below.

Party	Status
Associated British Ports	The Applicant is in discussions with ABP. The Applicant notes that ABP have not raised any specific objections to the draft Protective Provisions included within the draft DCO for ABP's benefit. However, ABP are unwilling to confirm agreement at this stage pending resolution of commercial land discussions with Hornsea Project One. The Applicant would further refer to the Applicant's response to ABP's response to Question DC12 at Part 2 of the Applicant's response to Deadline II.
Operators of electronic communications networks	The Applicant has consulted with the relevant telecommunication undertakers pre and post application and no representations have been made by any relevant party. The Applicant is however seeking confirmation of this from British Telecommunications Plc and Virgin Media Limited.

Centrica Plc	The Applicant is in discussion with Centrica Plc and will provide an update in due course.
VPI Immingham LLP	In discussion and seeking to progress a draft SoCG and to agree suitable Protective Provisions for protection of VPI's infrastructure. The Applicant will provide a further update in due course.
Phillips 66 Limited	The Applicant understands that Protective Provisions are agreed and is awaiting formal confirmation of this from Phillips 66 Limited.
Network Rail Infrastructure Limited	Protective Provisions have been agreed and the Applicant notes that Network Rail have confirmed to the Ex. A that they have no objection to the draft DCO.
Northern (Yorkshire) Plc Powergrid	The Applicant is in discussion with Northern Powergrid (Yorkshire) Plc and will provide an update in due course.
National Grid	The Applicant is in discussion with National Grid and will provide an update in due course.
Anglian Water Services Limited	The Applicant understands that Protective Provisions are agreed and is awaiting formal confirmation of this from Anglian Water Services Limited. The Applicant further refers to the Applicant's response to Anglian Water Services Limited's response to CA9 at Part 2 of the Applicant's response to Deadline II.
ConocoPhillips (U.K.) Limited	The Applicant is in discussion with ConocoPhillips (U.K.) Limited and will provide an update in due course.
C.GEN Killingholme Limited	Update to be provided in response to Deadline IIA as requested in the Rule 17 Letter.
Hornsea Project One Companies	Update to be provided in response to Deadline IIA as requested in the Rule 17 Letter.

11.	Section 106 and Planning Performance Agreements
-----	---

11.1 The Applicant considers that there is no requirement for any s.106, s.278 or Planning Performance Agreements. The Applicant would be happy to discuss Planning Performance Agreements with the relevant local authorities post-consent.

12.	Requirements
-----	--------------

Requirement 2

12.1 The Applicant is considering the request from the Ex. A to provide further detail of the design parameters in paragraphs 9 and 10 of Requirement 2 of the draft DCO. The Applicant will seek to provide a further update in respect of this in its response to Deadline IIA.

Requirement 21

- 12.2 The Applicant considers that it would not be appropriate to amend Requirement 21 (Part 3 of Schedule A of the draft DCO) to require co-operation with Hornsea Project One. Requirement 21 was drafted to facilitate co-operation between the undertakers in respect of the Project, not between two separate DCO projects. It would not be appropriate or effective to seek to impose co-operation on two separate DCOs within the Project's draft DCO.
- 12.3 It is the Applicant's position that co-operation between the Projects is best dealt with by commercial agreement between the parties. The Applicant will provide a further update on co-operation with Hornsea Project One in its response to Deadline IIA.

13.	In-Principle Monitoring Plan
-----	------------------------------

- 13.1 A draft In-Principle Monitoring Plan has been sent to Natural England and is currently under discussion.
- 13.2 The Applicant's position is that the appropriate use of the IPMP is to provide comfort to stakeholders throughout the Examination as to what will be covered in the pre-construction plans submitted pursuant to the DCO and the DMLs post-consent, and the parameters of that coverage. It is not necessary or desirable for the IPMP itself to be secured within the DCO as this would create a duplication with those plans which are already secured.

14.	Status of Discussions with Offshore Stakeholders
-----	--

- 14.1 At the Hearing the Applicant provided the Ex. A with an update on the status of discussions with offshore stakeholders. The Applicant would refer the Ex. A to Appendices II to ZZ of its response to Deadline I which contain copies of Letters of Comfort and Statements of Common Ground with relevant parties.
- 14.2 The Applicant is in discussions with the MMO regarding a condition in the draft DMLs requiring the relevant undertaker to enter data into the marine data registry. The Applicant will seek to provide a further update in respect of this in its response to Deadline IIA.

15.	AOB
-----	-----

- 15.1 None and the Ex. A closed the hearing.