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Our Ref.: Hornsea 2

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20 October 2015

Dear Katherine

Hornsea Offshore Wind Farm Project Two – Response to Examining Authority’s Second Written Questions

I am writing in response to Question CA 17 of the Examining Authority’s Second Written Questions for the Hornsea Offshore Windfarm Project Two.

Question CA17(a)

Has the Crown Estate (TCE) granted consent for the acquisition of interests held otherwise by the Crown on land within its control? If so – please provide documentary evidence of this.

We assume that this question is seeking to address whether consent has been given by the Crown Estate Commissioners (the **Commissioners**) in satisfaction of and pursuant to section 135(1)(b) of the Planning Act 2008 (the **Act**).

As regards any rights of compulsory acquisition which the “undertaker” as defined in the draft DCO in its current form may be seeking in relation to interests in Crown land falling under section 135(1)(a) of the Act, the Commissioners consent to the inclusion of such rights in the draft DCO but reserve their consent to the exercise of such compulsory acquisition powers as provided for in and permitted by section 135(1)(b) of the Act (and as expressly confirmed by Article 39 of the draft DCO). Any grant of the Commissioners’ consent to the exercise of such compulsory acquisition powers will be at the Commissioners’ discretion and will depend on the “undertaker”, the Commissioners and the relevant holder of an interest in “Crown land” as defined in section 135(1)(a) of the Act having first worked to find a solution which avoids the use of compulsory acquisition powers.

Question CA17(b)

The ExA notes the applicant’s response to Crown Land and Article 39 as set out in their summary of the oral case for compulsory acquisition hearing of the 17 September 2015 (REP3-015). The ExA do not have any concern regarding the drafting of Article 39 which is common article included in DCOs to protect Crown Interests. However, the ExA remain concerned that 39(a) purports to permit the Crown to consent to the compulsory acquisition of their interests which is not permissible under the Planning Act

2008. The ExA is aware that in other DCOs Crown Interests have been expressly excluded from compulsory acquisition by the description of the land in the Book of Reference (BoR) including the phrase "except for the interests of The Crown Estate / The SoS for transport / The SoS for defence." This has the effect of preventing the compulsory acquisition of Crown interests because the "Order land" over which compulsory acquisition is authorised is defined as "the land described in the Book of Reference". The applicant is asked to consider either excluding the Crown Interest in this way or to amend Articles 18 & 19 to expressly exclude interests of the Crown from the compulsory acquisition sought.

We note that this question is for the applicant to address. However, we understand that the applicant is amending the BoR to exclude interests held by or on behalf of the Crown, which would be in line with our expectations.

Question CA17(c)

Can TCE comment on its view of the CA powers being sought in the draft DCO and the interests held otherwise than by the Crown in land owned by the Crown and whether the terms of s135 (1)(2) are met?

The Commissioners confirm that it is not intended for Crown land (other than any interest in Crown land held otherwise than by or on behalf of the Crown as per the response to Question CA17(a) above) to be subject to compulsory acquisition powers and agree that the BoR should be amended to exclude this as you suggest in question CA17(b).

Section 135(1) of the Act permits the inclusion in a development consent of provision authorising compulsory acquisition of an interest in Crown land held otherwise than by or on behalf of the Crown subject to the consent of the Crown to the exercise of the compulsory acquisition powers as referred to above. This is reflected in Article 39(1)(b) of the draft DCO as set out below.

(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee:

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary):
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

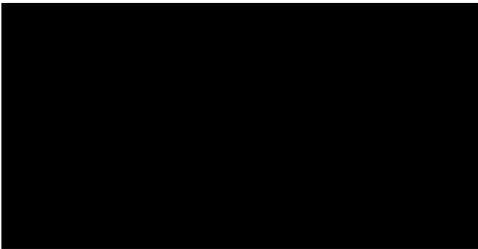
(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

In relation to section 135(2) of the Act, the Commissioners have provided their consent to the inclusion of Article 39 in the draft DCO – please refer to our letter to you dated 15 July 2015 (a copy of which is attached for ease).

The approvals provided are conditional upon Article 39 and any other provision of the which is subject to section 135(1) or 135(2) of the Act remaining materially as stated in the draft DCO and the Commissioners would expect to be consulted further if any variation to the draft DCO is proposed during the examination period which could affect such provisions.

Please do not hesitate to get in touch if you would like to discuss this any further.

Yours sincerely



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15 July 2015

Dear Ms King

Re. Hornsea Offshore Wind Farm Project Two – Response to Examining Authority’s First Written Questions

I am writing in response to Question CA13 of the Examining Authority’s First Written Questions for the Hornsea Offshore Wind Farm Project Two.

Question CA13

In relation to Article 39 ‘Crown Rights’ of the draft DCO [APP-010] and s.135(2) of PA2008, can the Crown Estate confirm its agreement or otherwise to the wording of the draft Article and if necessary propose alternative wording?

I confirm The Crown Estate’s agreement to the wording of Article 39 ‘Crown Rights’ as set out below:

(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee:

(a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary):

(i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Yours sincerely



Jonny Boston

Senior Development Manager