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**To:** [Hornsea2](#)  
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**Subject:** 151210 EN010053 The Crown Estate – Review of Applicant's Draft DCO V7  
**Date:** 10 December 2015 20:13:08  
**Attachments:** [TCE comments on Hornsea Two Draft DCO V7.pdf](#)

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Dear Ms King

Please find attached comments from The Crown Estate on the Hornsea Project Two Draft DCO V7, as directed by the procedural decision on 26 November 2015. If you have any further queries regarding this matter, please do not hesitate to contact me.

Kind regards  
Jonny Boston

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**Jonny Boston**  
Senior Development Manager



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Your Ref.: EN010053  
Our Ref.: Hornsea 2

10 December 2015

Dear Ms King

### **Hornsea Offshore Wind Farm Project Two – Review of Applicant’s Draft DCO V7 (REP5-006)**

I write in response to the procedural decision issued by the Examining Authority on 26 November 2015 directing interested parties to review the Applicant’s Draft DCO version 7 (REP5-006) (“**the Draft Order**”).

Having reviewed the Draft Order, we note the inclusion of new paragraph (4) (b) to Article 35 (Transfer of benefit of Order) which provides as follows:

“The transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and any breach of restrictions, liabilities or obligations with respect to the transferred benefit shall not be enforceable against the undertaker, except in relation to any such breach occurring prior to the date of transfer.”

We have some concern that the paragraph expressly provides that the undertaker will remain liable for any restrictions, liabilities and obligations associated with the transferred benefit that occurred prior to the date of transfer but is silent on the transferor’s position where it makes only a partial or temporary transfer of the benefit.

In the case of a partial transfer, there may be restrictions, liabilities and obligations which in practice may not be “ring-fenced” around the transferred benefit and in those circumstances the transferor should remain liable for overlapping restrictions, liabilities and obligations as well as those solely associated with the retained benefit.

In the case of a temporary transfer, we believe that the Draft Order may need to make express provision for the resumption of liability for restrictions, liabilities and obligations by the transferor.

Our initial view is that we do not think it is sufficient to rely simply on the characteristics of the transferred benefit to determine the transferor’s liability position particularly since the Draft Order makes express provision for liability before and at the date of transfer. Our concern is that such an approach may raise doubt about the enforceability of restrictions, liabilities and obligations in the case of partial or temporary transfer as referred to above.

We do however appreciate that the inclusion of the paragraph in the Draft Order has been agreed by the Applicant and relevant stakeholders. As we have not been involved in the related discussions, we are therefore discussing the position with the Applicant and we will revert to you with any further comments on the matter by no later than the close of the Examination.

Yours sincerely



**Jonny Boston**

Senior Development Manager