

Hornsea Offshore Wind Farm

Project Two

The Applicant's Response to Deadline IIA

Application Reference: EN010053

25 August 2015

smartwind.co.uk

CONTENTS

Section	Page No
1. Overview	4
2. Response to the Rule 17 Letter	4
3. Updated Development Consent Order	4
Part 1	7
The Applicant's response to the Rule 17 Letter	7

TABLE OF APPENDICES TO THE RESPONSE

A	Draft Development Consent Order – Version 4
B	Comparison of Version 4 of the draft Development Consent Order against Version 3
C	Comparison of Version 4 of the draft Development Consent Order against Version 1
D	Schedule of Changes to Version 4 of the draft Development Consent Order
E	Plan of the indicative cable corridors at the National Grid substation for the Project, Hornsea Project 1 and C.GEN
F	Plan showing extant permissions and applications in the immediate environs of the converter/substation site
G	Able Logistics Park Planning Permission
H	Approved Plans accompanying the Able Logistics Park Planning Permission
I	Photomontages in relation to Q4 of the Rule 17 Letter
J	Section 135 Consent from Highways England Historical Railways Estate
K	Update on Status of Discussions with Certain Stakeholders
L	Indicative Construction Schedule Scenarios
M	MacArthur Green Seabird PVA Report – August 2015
N	Clarification Note - Apportioning of predicted gannet mortality to the Flamborough and Filey Coast pSPA population
O	Clarification Note - Apportioning of predicted guillemot mortality to the Flamborough and Filey Coast pSPA population
P	Clarification Note - Apportioning of predicted kittiwake mortality to the Flamborough and Filey Coast pSPA population
Q	Clarification Note - Apportioning of predicted puffin mortality to the Flamborough and Filey Coast pSPA population
R	Clarification Note - Apportioning of predicted razorbill mortality to the Flamborough and Filey Coast pSPA population
S	Clarification Note – Unidentified Birds
T	Letter from the Applicant to Natural England dated 26 July 2013 concerning onshore survey validity
U	Letter from SMart Wind on behalf of DONG Energy to the Planning Inspectorate noting change of ownership
V	Draft Protective Provisions proposed by the Applicant for the benefit of C.GEN (as referred to in the answer to Question 3 of the Rule 17 Letter)
W	Draft Protective Provisions for the benefit of Hornsea Project One (as referred to in the answer to Question 3 of the Rule 17 Letter)

1. Overview

- 1.1 In response to the Examining Authority's ("Ex. A") letter of 4 August 2015 (the "Rule 17 Letter"), which requested certain additional information in relation to the Hornsea Offshore Wind Farm Project Two application (Application Reference: EN010053) ("the Project"), SMart Wind Limited ("SMart Wind") as agent on behalf of the joint applicants Optimus Wind Limited ("Optimus Wind") and Breesea Limited ("Breesea") (together "the Applicant") has prepared the following response (the "Response").
- 1.2 Within its response to Deadline II the Applicant intimated that it would provide an update and/or clarification on certain issues within its response to this Deadline IIA. Those matters are also therefore addressed below.
- 1.3 The Applicant also wishes to confirm to the Ex. A that on 21 August 2015 DONG Energy Power (UK) Limited ("DONG Energy") completed the purchase of all of the issued share capital of Optimus Wind, Breesea and SMart Wind. Therefore, DONG Energy is now the sole owner of those companies. Whilst there has been a change in ultimate ownership, the identity of the Applicant remains the same and SMart Wind will continue to act as agent on behalf of the joint applicants Optimus Wind and Breesea in relation to the Project. A letter confirming the same and providing additional narrative is included at Appendix U of the Response. The Applicant has also contacted (via email) those stakeholders who have participated in the examination of the Project, informing them of the change in its ownership. For the avoidance of doubt however, and as noted above, the identity of the relevant parties to this Application (SMart Wind as agent acting on behalf of Optimus Wind and Breesea) has not changed.
- 1.4 As a result of the purchase, the Project and Hornsea Project One now have the same ultimate owners. As the Applicant narrates in response to question 3 of the Rule 17 Letter, on the basis of this change of control at a corporate level the Project and Hornsea Project One are confident that the interfaces can be appropriately managed.

2. Response to the Rule 17 Letter

- 2.1 The Rule 17 Letter contained ten specific requests for information in relation to the Project. The Applicant has provided responses to these requests at Part 1 of the Response (which begins on page 7). The Applicant has repeated the chronology of the Rule 17 Letter for the Ex. A's ease of reference and where additional material has been submitted to aid the response, this has been submitted by way of separate Appendix.

3. Updated Development Consent Order

- 3.1 The Applicant submitted Version 3 of the draft DCO at Appendix A to its response to Deadline I. The Applicant also submitted an update to the Schedule of Changes to the draft DCO at Appendix C of its response to Deadline I, which narrated the changes from Version 1 of the draft DCO.
- 3.2 The Applicant has provided a further update to the draft DCO (Version 4) at Appendix A of the Response, which incorporates further changes as a result of further discussions with stakeholders and to address matters discussed at the DCO Hearing held on 30 July 2015. To assist the Ex. A, the Applicant has also updated the Schedule of Changes to incorporate these further amendments at Appendix D to the Response.

- 3.3 The Applicant detailed within its summary of oral case from the DCO Hearing held on 30 July 2015 (Appendix A to its response to Deadline II) that it would provide a response to certain matters discussed at the DCO Hearing held on 30 July 2015. Version 4 of the draft DCO (Appendix A of the Response), together with the explanatory narrative within the update to the Schedule of Changes (Appendix D of the Response), addresses a number of the points of discussion. However, the Applicant has not proposed amendments in relation to the matters identified below for the reasons set out.

Definition of Completion

- 3.4 During the DCO Hearing the Ex. A suggested that it may be helpful to include a definition of “completion” in the draft DCO. This was raised specifically in relation to Article 26(5) but the Applicant understands the comment applies to the draft DCO more generally.
- 3.5 The Ex. A noted that a definition may make it clear to any interested or affected parties when completion has occurred.
- 3.6 Presently, the term “completion” is used a number of times in the draft DCO and it often relates to separate issues, e.g. completion of part of the authorised project (Articles 16 and 26), completion of street works (Article 13) and completion of the acquisition of land (Article 21).
- 3.7 There are also numerous references to completion in the draft DMLs. We note that the MMO stated in their Response to Deadline II on this point that:
“this has not been raised before on other similar projects as far as [the MMO] is aware. When considering phasing and maintenance this may be difficult to define as a stand-alone term. Following further consideration and review in context of the DCO, ‘completion’ does not appear to be used in isolation in any of the DCO provisions i.e. it is always used in conjunction with an activity, therefore the MMO does not see a benefit to its definition within the DCO.”
- 3.8 The Applicant concurs with the MMO’s position on this matter. It is the Applicant’s view that it is sufficiently clear in each relevant provision of the draft DCO what the term “completion” is intended to mean and given that completion has different meanings according to the particular context of the relevant provision, the Applicant does not consider it would be appropriate or helpful to include a general definition in the draft DCO.

Possible typographical error in Article 35(4)

- 3.9 During the DCO Hearing, the Ex. A queried whether Article 35(4) in the draft DCO should refer to paragraph (5) in addition to paragraph (1). The Applicant does not consider it necessary to refer to paragraph (5) as paragraph (1) is the provision conferring the power and paragraph (5) is stating the circumstances in which consent of the Secretary of State is not required.
- 3.10 The Applicant also notes that the present drafting of Article 35(4) is standard wording that appears in a number of other consented Development Consent Orders, e.g. The Hornsea One Offshore Wind Farm Order 2014 and The East Anglia ONE Offshore Wind Farm Order 2014.
- 3.11 The Applicant does not, therefore, consider it necessary to make any amendment to the existing drafting for this provision.

Submission of data into the marine data registry

- 3.12 As noted in the Applicant’s response to Deadline II, 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.

- 3.13 The Applicant has no objection in principle to the inclusion of such a condition; however, the exact detail of the drafting remains under discussion between the parties. The Applicant anticipates that it will be in a position to further update the Ex. A at the forthcoming Issue Specific Hearing on 15 and 16 September 2015.

Dropped Object Procedure Form

- 3.14 The Applicant advised within its response to Deadline II that following the DCO Hearing, the MMO suggested amended wording to Condition 8(6), (7) and (8) of the draft DMLs to expand the condition to cover maintenance as well as construction and to include wording detailing the procedure of notifying the MMO, through the use of a dropped object procedure form.
- 3.15 The Applicant remains in discussions with the MMO as to the detail of their requested amendments. Subject to receiving the necessary clarification from the MMO, the Applicant anticipates that it will be in a position to update the Ex. A at the Issue Specific Hearing on 15 and 16 September 2015.

PART 1
The Applicant's response to the Rule 17 Letter

1.	A map of all the cable corridors, agreed or planned, at the sub-stations/National Grid connections site, for Hornsea Project 2 (A and B), Hornsea Project 1 and C.GEN. This is to include any applications under the Electricity Act 1989, Planning Act 2008 and Town and Country Planning Act 1990.
----	--

1. The Applicant has provided a composite plan of Hornsea Project One's, C.GEN's and the Project's indicative cable corridors in the vicinity of the existing National Grid substation at North Killingholme at Appendix E of the Response.
2. The plan has been produced in consultation with the Hornsea Project One Companies and using the plans that have been used for ongoing discussion with C.GEN.

2.	Again, in relation to the sub-stations/National Grid connections site, and its immediate environs, a plan (with text as appropriate) explaining all extant permissions, and applications, plus the planning permission notice and accompanying approved site layout and elevation plans (if available) of the adjoining proposed Able Logistics Park development.
----	---

1. The Applicant has provided the requested plan at Appendix F of the Response. For the Ex. A's ease of reference, a summary of those included is provided below.

Application/Consent	Determining Authority	Project
PINs reference EN010053	Secretary of State	Hornsea Project Two
The Hornsea One Offshore Wind Farm Order 2014	Secretary of State	Hornsea Project One
The Able Marine Energy Park Development Consent Order 2014	Secretary of State	Able Marine Energy Park
The North Killingholme (Generating Station) Order 2014	Secretary of State	C.GEN North Killingholme Power Project
Planning permission PA-2009-0600	North Lincolnshire Council	Able Logistics Park

Planning permission PA/2008/0988 and subsequently varied by PA/2009/0489	North East Lincolnshire Council	URSA Glass Wool Plant
--	---------------------------------	-----------------------

2. The Applicant further encloses a copy of the planning permission notice and a number of the accompanying approved plans relating to the Able Logistics Park development (planning permission ref: PA-2009-0600) at Appendices G and H of the Response. These plans have been sourced from the North Lincolnshire Council (NLC) planning portal website and are repeated in the table below. The Applicant notes there appear to be some minor discrepancies between the approved plans listed in the planning decision notice and the plans currently available from the NLC website. These discrepancies have been highlighted in the table below and the Applicant has sought clarification from NLC on this and will forward the correct revisions to the Ex. A as soon as possible.

Drawing No.	Drawing Title	Revision
ALP-02004	Phasing Plan	B*
ALP-02005	Masterplan Option 1	A**
KI-02000	Location Plan of Proposed Development Site	D*
KI-02002	Masterplan Option 2	T*
KI-02028	Building A – Elevations	B
KI-02031	Building B – Elevations	B
KI-02034	Building C – Elevations	B
KI-02037	Building D – Elevations	B
KI-02040	Building E – Elevations	C
KI-02043	Building F – Elevations	B
KI-02046	Building G – Elevations	B
KI-02049	Building H – Elevations	B
KI-02052	Building J – Elevations	C
KI-02055	Building K – Elevations	A
KI-02058	Building L – Elevations	B
KI-02060	Building M - Plan and Elevation	A
KI-02064	Building N – Elevations	A
KI-02067	Building P – Elevations	B
KI-02070	Building Q - Elevations	A

KI-02073	Building R – Elevation	A
KI-02076	Building S – Elevations	B
KI-02079	Building T – Elevations	B
KI-02082	Building U – Elevation	A
KI-02085	Building V – Elevation	C
KI-02088	Building W – Elevation	B
KI-02090	Building X - Plan and Elevation	A
KI-02094	Building Y – Elevation	A
KI-02108	Building A C – Elevation	A
KI-02112	Building AD – Elevation	A
KI-04002	Building AA – Elevations	A
KI-02023	Spine Road Sections (Referred to as ‘Boundary Section Locations’ on the decision notice)	F*
KI-02101	Spine Road Sections	C***

* The Applicant notes that the revisions of these approved plans referred to in the Decision Notice are not currently available on the NLC planning portal website. In each instance the Applicant has instead provided the version of those approved plans that is available. The Applicant has sought to clarify this discrepancy with NLC and will provide an update once available.

** The Applicant notes that this plan referred to in the Decision Notice is not currently available (in any form) on the NLC planning portal website. The Applicant has sought to clarify this discrepancy with NLC and will provide an update once available.

*** The Applicant notes that this plan is available on the NLC planning portal website, but is not referred to in the decision notice. However, it appears to the Applicant to be a continuation of approved Drawing No. KI-02023 and so has accordingly been included for sake of completeness. The Applicant has sought to clarify this discrepancy with NLC and will provide an update once available.

- The Applicant would also like to confirm to the Ex. A that the Applicant has included an assessment of each of these projects within the cumulative sections of the Landscape and Visual Resources Chapter of the ES (Doc Ref. 7.3.5) (see Section 5.8).

3.	Draft Protective Provisions between Hornsea Project 2 and C.GEN, and between Hornsea Project 2 and Hornsea Project 1.
----	---

Protective Provisions between the Project and Hornsea Project One

- Constructive discussions between Hornsea Project One and the Project have continued. As narrated in the introduction to the Response above, the Applicant and DONG Energy can confirm that on 21 August 2015 DONG Energy completed the purchase of all of the issued share capital of Optimus Wind, Breesea and SMart Wind. This means that the Hornsea Project One and the Project now have the same ultimate owners.

2. On the basis of this change of control at a corporate level the Project and Project One are confident that the interfaces can be appropriately managed. The Applicant acknowledges that protective provisions were requested by the ExA and has therefore submitted an indicative set of protective provisions, which are under discussion at Appendix W of the Response. The Applicant, together with the Project One Companies, proposes to submit an update Statement of Common Ground to explain how those interfaces between the Project and Project One will be managed. This will address the question of the use of private cooperation agreement(s) and protective provisions. It is possible that the Applicant and the Project One Companies will conclude that protective provisions are not needed within the DCO.

Protective Provisions between the Project and C.GEN

1. Constructive discussions between the Applicant and C.GEN on draft protective provisions have continued since Deadline II. The protective provisions are largely agreed between the parties, with only a small number of discrete points subject to on-going discussion.
2. For immediate purposes, the Applicant has included the form of draft protective provisions it proposed to C.GEN at Appendix V of the Response. The Ex. A will note that these protective provisions are closely based on those included for the benefit of C.GEN by the Secretary of State within the Hornsea One Offshore Wind Farm Order 2014, as well as reflecting the subsequent minor amendments to those protective provisions agreed between the Hornsea Project One Companies and C.GEN within a private agreement dated 20 January 2015 (as submitted by C.GEN as part of its written representation submitted at Deadline I in relation to this Project).
3. The Applicant and C.GEN are hopeful that an agreement will be reached shortly on the terms of the protective provisions and will in any event provide an update to the Ex. A at the forthcoming Compulsory Acquisition Hearing on 17 and 18 September 2015.

4.	<p>Appropriate photomontage(s) of the cumulative impact of the worst case visual impact scenario(s) for the proposed Hornsea Project 2 and Hornsea Project 1 substation developments combined (i.e. 2 no. HVDC Converter Station for each project) during the operational phase; from the following locations:</p> <ul style="list-style-type: none"> • Thornton Abbey – Viewpoint 39 • Thornton Abbey – the gatehouse arch • Thornton Abbey – gatehouse upper floors • Manor Farm moated site • Viewpoint 31, Kettlebridge Lane, East Halton • Viewpoint 32, Footpath 77, East Halton • Viewpoint 40, Marsh Lane East Halton
----	--

1. The Applicant encloses the following photomontages at Appendix I of the Response.

Document Reference	Viewpoint

8926 R17 PM1	Thornton Abbey – Viewpoint 39
8926 R17 PM2	Thornton Abbey - the gatehouse arch
8926 R17 PM3	Thornton Abbey – gatehouse upper floors
8926 R17 PM4	Manor Farm moated site (Qu4 R17)
8926 R17 PM5	Viewpoint 31, Kettlebridge Lane, East Halton
8926 R17 PM6	Viewpoint 32, Footpath 77, East Halton
8926 R17 PM7	Viewpoint 40, Marsh Lane East Halton

2. As requested, these photomontages show HVDC Converter Stations for both the Project and Hornsea Project One.
3. The Applicant notes that the view of the Project from Thornton Abbey Gatehouse Arch (8926 R17 PM2) is obstructed and therefore the Applicant has included a wireline for illustrative purposes.
4. The Applicant would also like to confirm to the Ex. A that the views from the upper floor of Thornton Abbey and the Manor Farm Moated Site were considered in the Historic Environment Chapter (Doc Ref. 7.3.6). The Applicant considered Viewpoints 39, 31, 32 and 40 within its impact assessment in the Landscape and Visual Resources Chapter (Doc Ref. 7.3.5).

5.	A plan of all the potential alternative cable connections into the National Grid substation proposed for Hornsea Project 2, Hornsea Project 1 and C.GEN
----	---

1. In relation to the Project only, the Applicant would refer the Ex. A to Appendix Q of the Applicant's response to Deadline I, which provided indicative alternative cable connection routes into the National Grid substation according to the final substation design.
2. In relation to Hornsea Project One and C.GEN, the Applicant is not currently able to show anything on a plan beyond the routes identified at Appendix E of this Response.
3. However, the Applicant would emphasise that the Project will require flexibility with its connection to (1) handle design changes to the Project or other infrastructure in the area; and/or (2) to accommodate changes from connection bay allocations which may arise from optimising connections or as agreed with National Grid.

6.	A revised version of Appendix O, Multiple Construction Schedule, which shows the following alternative scenarios (i) one undertaker; (ii) two undertakers operating sequentially; and (iii) two undertakers operating in parallel.
----	--

1. As noted in Appendix O of the Applicant's response to Deadline I and further briefly described in response to queries from the Ex. A at the DCO Hearing held on 30 July 2015, the Applicant sought to provide a summary of the indicative construction programme for the Project in section 3.5 of the Project Description (Doc ref No 7.1.3).

2. The Applicant provided an indicative single phase construction programme at Figure 3.42 of the Project Description and subsequently provided an indicative multiphase construction programme at Appendix O of the Applicant's response to Deadline I for the purposes of responding to certain questions within the Ex. A's first written questions.
3. As noted by the Applicant in the DCO Hearing held on 30 July 2015, the DCO is structured to allow Project A and Project B to be built out as separate projects; but also allows for the full capacity to be built out as one project alone. The Applicant noted in paragraph 2.3 of its summary of oral case (submitted as Appendix A to its response to Deadline II) that the final apportionment between Project A and Project B will be determined by a number of technical and commercial factors post-consent and prior to construction. Such flexibility on delivery is essential to optimise the delivery of the consented capacity and to achieve required levels of cost reduction to gain a competitive Contract for Difference whilst protecting the commercial viability of the Project.
4. The Project's Rochdale Envelope provides for a single or multiphase (up to a maximum of four phases) construction programme to allow for a necessary degree of construction flexibility. The Applicant would refer to paragraph 3.5.5 of the Project Description, which sets out various parameters which ensure a worst case assessment has been undertaken within the EIA for whichever construction scenario is taken forward. The Applicant would re-iterate that these parameters will:
 - apply irrespective of whether a single or multi phased construction programme is followed; and
 - define the Project in its entirety and so restrict both Project A and Project B cumulatively, rather than providing for maximum parameters independent to each respective project.
5. To illustrate, paragraph 3.5.5(i) states that:

“onshore cable ducting for all phases will be laid during the first phase. Work in subsequent phases will be limited to pulling cables into the ducts, jointing them (including creating joint pits and installing link boxes), and commissioning them.”
6. This dictates that regardless of whether there is one undertaker (Optimus Wind or Breesea) or two undertakers (Optimus Wind and Breesea), all onshore cable ducting will be laid during the first phase of the construction programme, with subsequent phases limited to pulling the cables into the ducts, jointing them and commissioning them.
7. Each of these parameters should be read in that context and recognised as the maximum cumulative parameter for the Project as a whole. The Applicant hopes the above explanatory text adequately clarifies the matter to the Ex. A, but for the sake of completeness the Applicant has also provided indicative programmes to address the scenarios requested in this question at Appendix L of the Response.
 - a) One undertaker;
 - b) Two undertakers constructing sequentially. For ease of demonstration, the Applicant has drafted this on the basis of Project B constructing immediately following Project A.

- c) Two undertakers constructing in parallel. For ease of demonstration, the Applicant has drafted on the basis of both Project A and Project B constructing directly concurrently.

7.	A submission following from the discussion at the DCO hearing on the applicant's proposals for dealing with Crown Land and land no longer in the possession of the Crown in the Book of Reference and any consequent amendments and in particular the proposed treatment of plots 272, 377, 378, 437 and 441, which Highways England has submitted have been transferred to it.
----	---

1. The Applicant provided an update on the position in relation to Crown consents in its response to Deadline II (see section 9 of Appendix A (Summary of Oral Case from DCO Hearing)). That update remains current as at the date of this Response; subject to a further update to note that consent has now been secured from Highways England Historical Railways Estate on behalf of the Secretary of State for Transport (see Appendix J of the Response).
2. The Applicant has also provided further explanation regarding the position with the Secretary of State for Transport and Highways England.

Land held by the Secretary of State for Transport

3. The Applicant is aware that a transfer scheme made by the Secretary of State under section 15 of the Infrastructure Act was entered into on 30 March 2015, transferring certain property, rights and liabilities from the Secretary of State to Highways England. Following this transfer, Highways England indicated to the Applicant that beneficial ownership of certain plots of the Order land had now passed to it. Highways England also indicated to the Applicant that beneficial ownership of plot 272 had subsequently been transferred to North East Lincolnshire Council.
4. The Applicant has carried out diligent inquiry at the Land Registry in respect of all of the plots in which the Secretary of State for Transport is noted in the Book of Reference as having an interest, including plots 272, 377, 378, 388, 437 and 441. Title to all of those plots remains registered to the Secretary of State for Transport at the Land Registry. As such, regardless of any change in beneficial ownership, legal title to those plots remains with the Secretary of State for Transport.
5. On this basis, until such time as titles to the relevant plots of land are registered in favour of Highways England or North East Lincolnshire Council (as the case may be) and legal ownership then vests with either of those parties the Applicant's intention is to continue to seek Crown consent from the Secretary of State for Transport directly in respect of all of the plots in which he has a registered interest. The Applicant is however also engaged with Highways England to obtain its consent in respect of its beneficial interests. The Applicant also notes that whilst legal title to plot 272 does not yet vest in North East Lincolnshire Council (as registered title remains with the Secretary of State for Transport), as explained in the table above, North East Lincolnshire Council is an affected person for the purposes of the Application, including as an Occupier of plot 272.

6. Version 2 of the Book of Reference (as amended by the Schedule of Changes (for the most recent version of which see Appendix C to the response to Deadline II)) notes the interest of the Secretary of State for Transport and provides an address for the Secretary of State for Transport, the Highways Agency and Highways England in respect of the relevant plots.
7. It is the Applicant's present intention to continue with this approach as the Secretary of State for Transport is the registered title holder at the Land Registry, the Highway Agency is the registered address for service at the Land Registry and Highways England has been included as is prudent as it is the successor to the Highways Agency. If and when legal title changes at the Land Registry in respect of any of the plots the Applicant will update the Schedule of Changes to the Book of Reference to reflect those changes as appropriate.

8.	<p>(a) As presently drafted, the DCO authorises the Compulsory Acquisition (CA) of land and rights over the land in part 2 of Schedule G of the DCO and the creation of new rights in the rest of the land contained in Schedule G. Can the applicant confirm that it is seeking the power to CA new rights in the land contained within Schedule G as well as temporary possession powers and that the relevant land owners and persons with interests in this land have been consulted on that basis?</p> <p>(b) Does the applicant intend to limit its CA powers over the land in Schedule G part 2 in light of the fact that the DCO presently authorises the CA of that land and any rights in it?</p>
----	---

8(a)

1. As more fully explained below in response to part (b) of this question, the Applicant is not seeking powers of Compulsory Acquisition (CA) of the land specified in Part 2 of Schedule G.
2. The Applicant can confirm that it is seeking powers of CA of rights over the land specified in Part 1 and Part 2 of Schedule G of the draft DCO. Article 19 of the draft DCO permits the CA of rights in the Order land. The Order land includes the land specified in Part 1 and Part 2 of Schedule G (being land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference, as defined in Article 2(1) of the draft DCO).
3. The Applicant is also seeking powers of temporary use (including temporary possession) of the land specified at Part 1 and Part 2 of Schedule G by virtue of Article 26 of the draft DCO. It is for such temporary use which the land in Schedule G has primarily been identified. It is the Applicant's intention that the land specified in Schedule G is used temporarily only (under Article 26); however, whilst it is hoped that these powers of temporary use should be sufficient for the carrying out of the authorised Project, the power to acquire rights or impose restrictive covenants on the land specified at Schedule G is necessary to ensure the Project can be delivered in practice. The Applicant refers to its response to question CA3(a) submitted for Deadline I on this point.
4. The Applicant is therefore seeking powers of temporary possession in respect of the Schedule G land and powers of CA of rights in respect of that land.

5. Article 26(10) provides (subject to the amendments referred to in response to part (b) below) that whilst the undertaker is precluded from acquiring the land referred to in Schedule G it is not precluded from acquiring new rights or imposing restrictive covenants under Article 19 in respect of that land. This provision is a model provision and has precedent in many other DCOs including the Galloper Wind Farm Order 2013, East Anglia ONE Offshore Wind Farm Order 2014, Rampion Offshore Wind Farm Order 2014 and the Walney Extension Offshore Wind Farm Order 2014.
6. As the Applicant is seeking powers of CA of rights over the land specified in Schedule G, all of the plots in Part 1 and Part 2 of Schedule G have been included in the Book of Reference which accompanied the Application. As such, all relevant land owners and persons with an interest in the land specified in Schedule G have been sent a copy of the draft DCO, containing the relevant CA and temporary use provisions, as part of the pre-application consultation on the Project. All relevant land owners and persons with an interest in the land have also been provided with a copy of Version 1 of the draft DCO post-application.

8(b)

1. It is not the Applicant's intention to seek powers of CA of the land specified in Part 2 of Schedule G. In reviewing the relevant provisions of the draft DCO the Applicant discovered an error in that Article 26(10) should also have provided that the undertaker may not compulsorily acquire the Order land specified in Part 2 of Schedule G of the draft DCO in addition to the Order land specified in Part 1 of Schedule G.
2. The Applicant has sought to correct this error in Version 4 of the draft DCO which has been submitted at Appendix A of the Response by seeking to make the following amendment to Article 26(10) -

“(10) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph s (1)(a)(i), ~~or paragraph~~ (1)(a)(ii), (2)(a) or (3)(a) except that the undertaker is not precluded from—

(a) acquiring new rights or imposing restrictive covenants over any part of that land under article 19 (compulsory acquisition of rights); or

(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 23 (acquisition of subsoil or airspace only).”

3. The Applicant is therefore seeking only powers of CA of rights over the land specified in Part 2 of Schedule G and powers of temporary use, as explained in response to part (a) of this question above.

9.	An update of progress towards Statements of Common Ground (additional to any provided for Deadline 2).
----	--

1. The Applicant has continued to engage with those stakeholders where matters under discussion or points of disagreement remain. The Applicant has provided a tabular update at Appendix K of the Response where it considers it has further information to usefully advise the Ex. A on progress with certain of these stakeholders, specifically E.ON, the RSPB, Natural England, VPI Immingham and the MMO.

10.	Can the applicant explain the purpose and content of Works Plans, their legal status and use in custom and practice and comment on whether it is appropriate or legitimate to define Works (i.e. A and B) in the draft DCO and not reflect the spatial extent of these Works on the submitted Works Plans?
-----	--

1. Regulation 5(2)(j) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) states that an application for an order granting development consent must be accompanied by a works plan showing, in relation to existing features:
 - a) the proposed location or (for a linear scheme) the proposed route and alignment of the development and works; and
 - b) the limits within which the development and works may be carried out and any limits of deviation provided for in the draft order.
2. This is supplemented by PINS Advice Note 13: *Preparation of a draft order granting development consent and explanatory memorandum*, which states on page 3 that, “each element of the NSIP and each element of any necessary associated development should be clearly set out as separate numbered ‘works’ in a Schedule to the draft DCO, and cross-referenced to the corresponding works shown on the works plan.”
3. The Applicant considers this provides the legal framework and statutory purpose behind the content of the Project’s Works Plans.
4. The Applicant would direct the Ex. A to paragraphs 1.10 and 1.11 of the Project’s Explanatory Memorandum, which sought to explain the intention behind the structural set up of the authorised project as drafted within the draft DCO. In particular, the Applicant noted that the draft DCO authorises two offshore wind farms: Project A and Project B together with the associated development and grid connection for each project. The Applicant further highlighted that both Project A and Project B would have the same connection point into the National Grid and share the same cable route. The Applicant then explained at paragraph 1.11 that both Project A and Project B would likely be constructed by different operators: Optimus Wind Limited (“Optimus Wind”) in the case of Project A and Breesea Limited (“Breesea”) in the case of Project B.
5. In the context of the above, the Applicant would now refer the Ex. A to the interpretation provisions within Article 2(1) of the draft DCO. In particular, the Applicant observes that:
 - a) “Project A works” is defined to mean “*Work Nos. 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A and 10*”;
 - b) “Project B works” is defined to mean “*Work Nos. 1B, 2B, 3B, 4B, 5B, 6B, 7B, 8B, 9B and 10*”; and
 - c) “shared works” is defined to mean “*Work No. 10*”.
6. The Applicant explains the intention of the “shared works” at paragraph 1.11 of the Explanatory Memorandum, stating that Work No. 10 (improvements to access road) may be constructed by either Optimus Wind or Breesea and that they are necessary to be considered “shared” as they are located in areas where equal access to the sites will be required for both projects. The draft DCO therefore makes provision for them to be carried out by Optimus Wind or Breesea and any restrictions, liabilities and obligations arising in relation to any shared works will apply to the undertaker exercising the powers in relation to such shared works.

7. Article 2(5) of the draft DCO further confirms that “references in this Order to numbered works are references to the scheduled works as numbered in Part 1 of Schedule A.”
8. The Ex. A will note that the scheduled works within Part 1 of Schedule A are separated between Project A works and Project B works in relation to each distinct Work No. The Ex. A will further note that the Project A works and Project B works are in each instance, direct copies of one another, save for the necessary reference updates to reflect whether they apply to Project A or Project B. For ease of demonstration, the Applicant repeats Work No. 2A and Work No. 2B below:

Work No. 2A

“Subject to paragraph 6, up to six offshore HVAC collector substations and, in the event that the mode of transmission is HVDC, up to two offshore HVDC converter substations together with a network of electrical circuits connecting the structures within Work Nos. 2A and 2B.”

Work No. 2B

“Subject to paragraph 6, up to six offshore HVAC collector substations and, in the event that the mode of transmission is HVDC, up to two offshore HVDC converter substations together with a network of electrical circuits connecting the structures within Work Nos. 2A and 2B.”

9. Whilst the Work No. descriptions for Project A and Project B are complete duplicates, in each instance their total cumulative capacity is restricted by a subsequent paragraph within Part 1 of Schedule A. For instance, in the context of Work Nos. 2A and 2B above, the Applicant restricts their cumulative total through paragraph 6 of Part 1 of Schedule A, which states that the *“combined total of offshore HVAC collector substations constructed in whole or in part within Work Nos. 2A and 2B must not exceed six and the combined total of offshore HVDC converter substations constructed in whole or in part within Work Nos. 2A and 2B must not exceed two.”* In this way, the Applicant ensures that no part of the development can exceed the maximum parameter authorised by either the Project A or Project B works. This is purposely drafted to provide flexibility to the Project’s final design and is a conscious recognition that whilst the draft DCO authorises two wind farms, it remains possible that the Project will be built out to its full capacity as only Project A or Project B. The decision as to whether to build out the Project as one or two distinct projects and in what apportionment will be taken post consent and determined by a number of technical and commercial factors. Flexibility to enable such a decision is essential to protect the commercial viability of the Project.
10. As the Project A works and Project B works are duplicates of one another, the Applicant does not consider it appropriate or indeed possible at this stage of the Project to seek to distinguish their spatial extent on the Project’s Works Plans. As explained above, as their respective limits of deviation could encompass the whole extent of the individual Work Nos., the Applicant considers that any attempt to restrict them would create a false perception of their potential boundary and undermine the flexibility required to protect the viability of the Project. As noted above, the restriction to their total extent is contained within paragraphs 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Part 1 of Schedule A to the draft DCO. These parameters are reflected within the limits of deviation for each respective Work No. within the Works Plans and ensure

that the Project cannot exceed the maximum parameters contained within the Project's Rochdale Envelope.

11. The Applicant noted in its response to PN2 at Deadline I that it considers the pre-construction plans secured under the draft DCO will provide the level of certainty as to the undertaker responsible for each Work No. and its spatial extent, ensuring that it will be clear to the relevant authority at the time how the Project is being split up (if at all) and which undertaker proposes to carry out each phase of the Project. These pre-construction plans will be constrained by the limits of deviation contained within the Works Plans and the restrictions contained within the draft DCO described above.