



## Meeting note

<b>File reference</b>	Hornsea Project Two - EN010053
<b>Status</b>	FINAL
<b>Author</b>	Hannah Dickson
<b>Date</b>	1 July 2014
<b>Meeting with</b>	<b>SMart Wind Limited</b> Patricia Hawthorn – Legal Advisor Stephanie Mill – Legal Advisor Sara Thomas – Offshore EIA Project Manager Chris Jenner – Environment & Consents Manager  <b>Planning Inspectorate</b> Jessica Powis - Infrastructure Planning Lead Andy Luke – Infrastructure Planning lead Katherine Chapman – Case Manager Hannah Dickson – Case Officer David Watts – Consents Service Unit Oliver Lowe – Consents Service Unit Sarah Green - Legal Manager Jenny Colfer – Senior EIA Advisor
<b>Venue</b>	Room 3/03, Temple Quay House, Bristol
<b>Meeting objectives</b>	Project update meeting
<b>Circulation</b>	All attendees

### Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) explained its openness policy and the commitment to publishing any advice under Section 51 of the Planning Act 2008 (PA 2008). It was confirmed that the Inspectorate is unable to give legal advice on which developers or others can rely and that developers should seek their own legal advice.

SMart Wind updated the Inspectorate on the progress of the application via a presentation



The presentation covered an update on the Hornsea Project Two application. SMart Wind clarified that whilst there is the potential for joint working between Hornsea Project One and Hornsea Project Two, the project applications have been prepared to enable the projects to exist independently. SMart Wind confirmed that there will be up to two onshore substations for Project Two and one for Project One, all at the same substation location and using the same onshore cabling route.

The lessons learnt from the production of the application for Hornsea Project One was discussed, with SMart Wind explaining that they are using the relationships with stakeholders built up through Project One to start agreeing Statements of Common Ground (SoCGs) for project two. The Inspectorate informed SMart Wind that they would be happy for the SoCGs to be submitted with the application, as this may assist in the formulation of the principal issues. A Cable Statement will be submitted as part of the application.

With regards to the consultation process, the Inspectorate suggested that SMart Wind make it very clear on their website exactly who is being consulted, and what they are being consulted on to avoid any confusion between projects. The Inspectorate also suggested that it might assist those being consulted if the applicant were to provide some background information to explain the relationship with Hornsea One and to highlight the potential for cumulative impacts. Making this clear now could be beneficial for the examination. The Inspectorate asked to be kept informed of public interest. In addition to this, SMart Wind notified the Inspectorate that they will issue a summary with the consultation report to describe how the list of consultees has changed, who has been added to the list, when and why. This could eliminate confusion and assist the Inspectorate during the acceptance period.

### **Feedback on draft Plans**

The Inspectorate asked SMart Wind to make sure that their plans were clear. Some of the plans are currently over-complicated and could be simplified, specifically the shading/coding on some of the offshore work plans.

It may be useful to provide a plan where the Hornsea Project Two is overlaid with the top of Hornsea Project One, in order to demonstrate what the two projects could look like if they were both consented. SMart Wind suggested that perhaps they could add this as an annex somewhere.

The Inspectorate suggested that co-ordinates should be included on the actual plans to assist the Inspectorate in checking that the plans are accurate during acceptance.

The Inspectorate suggested that a table showing the cumulative impacts of Hornsea Projects One and Two and project three (if possible) would be useful, and asked that SMart Wind to produce one. The Topic Specific cumulative impacts will be addressed

in each of the topic chapters. This would make it clear where impacts increase and decrease as a result of the project. It may also be useful to include other projects such as North Killingholme in a table although this is not a requirement. This would provide the Inspectorate with a worst case scenario for construction, and would assist from an EIA perspective.

### **Feedback on the Explanatory Memorandum (EM)**

**1.18 :** This paragraph refers to several construction compounds but does not identify the specific works within the DCO. It would be helpful if SMart Wind could explain in detail which compounds are referred to and why they are necessary.

It may be difficult for SMart Wind to show that the compulsory acquisition tests are met in relation to sites which are also to be used by project one.

The compulsory acquisition tests set out in s.122 PA 2008 require the land to be required for the development to which the development consent relates, required to facilitate or incidental to that development. SMart Wind is advised to provide detailed justification for all the construction compounds in the Hornsea project two DCO in their EM.

**20.1 – Article 19:** The EM states that this Article makes “no reference to existing rights”. The Inspectorate advised SMart Wind to review this statement given that Article 19 in the DCO permits the compulsory acquisition of existing rights as well as the creation of new ones.

**31.1 – Article 30:** The EM states that “...paragraph (4) which makes it clear that the article does not overlap with article 31 (trees subject to tree preservation orders)” The Inspectorate queried whether this is the correct reference as paragraph (4) relates to the hedgerow regulations.

**36.3 – Article 36:** The EM it states that “article 35(7) provides that...” There is no Article 35(7) in the DCO. The Inspectorate queried whether it should refer to 35(5).

### **Feedback on the draft Development Consent Order (DCO)**

**Article 2(1):** The definition of undertaker at (c) identifies the undertaker as either Optimus Wind or Breesea. The Inspectorate suggested that it would be helpful for SMart Wind to explain how this will work in relation to enforcement of the Order. For example, is it intended that enforcement action could be taken against either Breesea or Optimus Wind in relation to all the shared works no matter which company undertakes the works?

**Article 3:** As the consent it seeks to dis-apply would be required from the Environment Agency, the Inspectorate advised SMart Wind to consult with them on this Article if they have not already done so.

**Article 4:** The Inspectorate advised that SMart Wind should explain in detail in their funding statement why they cannot provide the form of guarantee with the application.

**Article 12(2) & 14(3):** If SMart Wind has not already done so, the Inspectorate suggested that it would be wise to seek the views of the Local Planning Authorities

and the Highway Authorities on these provisions which deem consent to be given if a response is not received within 28 days.

**Article 18:** It would be helpful for SMart Wind to explain what would happen if an undertaker refused to give consent. (This also applies to Article 19).

The Article as drafted does not refer to Article 19(3) or 26(9). As these provisions limit the powers of compulsory acquisition it would be helpful to clarify in this Article that the compulsory acquisition powers granted under Article 18 are subject to 19(3) and 26(9).

**Article 19:** The Inspectorate asked that SMart Wind confirm whether there will be any new rights in Schedule E which are for diverting or protecting statutory undertaker's apparatus (6) & (7) and whether they have consulted with the statutory undertakers affected by this on the Article.

**Article 35:** It would be helpful if SMart Wind could explain why it is necessary for the DCO to confer powers on the undertaker to enter into private commercial agreements. It would also be useful to the Inspectorate if SMart Wind could explain how this Article is intended to function in relation to Article 36(5) which permits the transfer of the benefit from one undertaker to another of any provision of the DCO.

### **Schedule A Part 1**

The Inspectorate queried how projects A and B within the DCO for Hornsea Two will interact when both authorise the construction of the entire wind farm. It would be helpful to understand when SMart Wind thinks it will know whether one or two projects will be built and the extent to which the development will be split between them. It would also be useful to understand how the projects will be distinguished once consented, i.e. how will the MMO and LPA's know whether it is project A being built or project B and what is the extent of the project.

### **Schedule A Part 3**

**Reg 2:** The detailed design parameters are not recorded in the same way as those for Hornsea One which makes it difficult to understand how the projects will relate to each other. It would be helpful for SMart Wind to explain why they have used the measurements they have.

**Reg 5:** It would be helpful for SMart Wind to explain why the areas are larger than those in project one for the same foundation types. It is believed that this is due to the size of the turbines proposed for the project.

**Reg 7, 8 & 9:** The Inspectorate advised that it can sometimes be difficult to identify the relevant plans within the body of an Environmental Statement (ES) and it could be clearer and easier to understand what is permitted by the Order if the plans referred to in these requirements were submitted separately and certified independently within the DCO. If SMart Wind decides to do this the requirements will need re-drafting to reflect this and ensure compliance with the certified plans instead of the draft plans within the ES.

**Reg 9 & 10:** These both contain tailpieces permitting the LPA to vary the landscape plan. This could enable the LPA to permit a scheme which is not based on the plan within the ES and which does not comply with that assessed in the ES and deemed to be necessary to achieve adequate mitigation. Tailpiece requirements need to be

justified clearly in the EM by reference to relevant case law. Tailpieces which go to the heart of the consent are not permissible. Other tailpieces should be sufficiently limited to prevent works being undertaken that are materially different to those permitted by the DCO and to those that have been assessed within the ES.

**Reg 19:** The Inspectorate advised SMart Wind to consult with the Environment Agency if they have not done already to seek their views on the deeming of approval.

### **Schedule H – Deemed Marine Licenses (DML’s)**

As above in relation to the Works, SMart Wind should explain how the DML’s will interact with each other. For example, when and how will the MMO know which DML’s are being used and what they will cover, i.e. how many turbines etc.? The MMO will need to know this to ensure compliance with the DML and for enforcement purposes? The Inspectorate would also be interested to know the MMO’s view on these DML’s and their workability in practice.

**DMLA2 (1):** The interpretation section does not include a definition of Works 2A, 3A, 4A & 5A even though the license relates to them; it would be advisable for SMart Wind to consider whether the inclusion of these definitions is necessary.

**DMLB2:** The interpretation section does not include a definition of Works 2B, 3B, 4B & 5B even though the license relates to them; the Inspectorate advised SMart Wind to consider whether the inclusion of these definitions is necessary.

### **Schedule I - Protective Provisions**

The Inspectorate would like to know whether these have been agreed with the relevant Statutory Undertakers and if the applicant is expecting any representations which will trigger s.127.

### **Habitats Regulation Assessment (HRA)**

SMart Wind is not seeking a review of the current draft HRA document.

SMart Wind has been asked to record points on which they have reached agreement with key stakeholders, which they will be able to produce as evidence of the agreement.

### **AOB**

Jessica Powis will be going on Maternity Leave, and Andy Luke has taken over as the Infrastructure Planning Lead. SMart Wind are to contact Andy Luke if they need any draft documents to be looked at. SMart Wind confirmed that they intend to submit documents around end of September for review.

The Inspectorate recommended that SMart Wind look at the new Pre-Application Prospectus as well as submitting a Consents Management Plan.

The Inspectorate queried when Hornsea Project Three could be expected. SMart Wind stated that at the moment they are expecting to submit scoping for Project Three in late 2015.

