From:	Dominika Phillips
To:	Hornsea Project Three; Kay Sully; KJ Johansson
Cc:	Andrew Guyton; Stuart Livesey
Subject:	Hornsea Project Three (UK) Ltd response to Deadline 3 (Part1)
Date:	14 December 2018 20:45:56
Attachments:	image003.png D3_HOW03_Cover_Letter.pdf D3_HOW03_IP_WR.pdf D3_HOW03_ISH1.pdf D3_HOW03_ISH2.pdf D3_HOW03_ISH3.pdf D3_HOW03_ISH4.pdf D3_HOW03_SoCG_RSPB_Dec_signed.pdf D3_HOW03_SoComm.pdf HOW03 Guide to the application.pdf

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Dear Kay, K-J

We are pleased to enclose Ørsted Hornsea Project Three (UK) Ltd ("the Applicant") response to Deadline 3, Friday 14 December 2018. These documents have been prepared by the Applicant and have been produced in response to the Examining Authority's (ExA) letter of 9 October 2018 ("the Rule 8 letter") as well as the Hearings (03-07 December 2018). The documents are pursuant to Rules 10(1) and (2) of the Infrastructure Planning (Examination Procedure) Rules 2010 and are in connection with the Development Consent Order application for the proposed Hornsea Project Three Offshore Wind Farm (hereafter referred to as "Hornsea Three").

These documents are being issued over a series of emails, each email containing a pdf file or files. The **last** email to be issued by the Applicant will contain a supporting file tracking sheet – to help the ExA ensure that it has received each email transmission.

Please acknowledge safe receipt of these documents. If we can be of any assistance in that regard, please do not hesitate to contact myself or Andrew Guyton.

Best regards,
Dr Dominika Chalder PIEMA
Environment and Consent Manager

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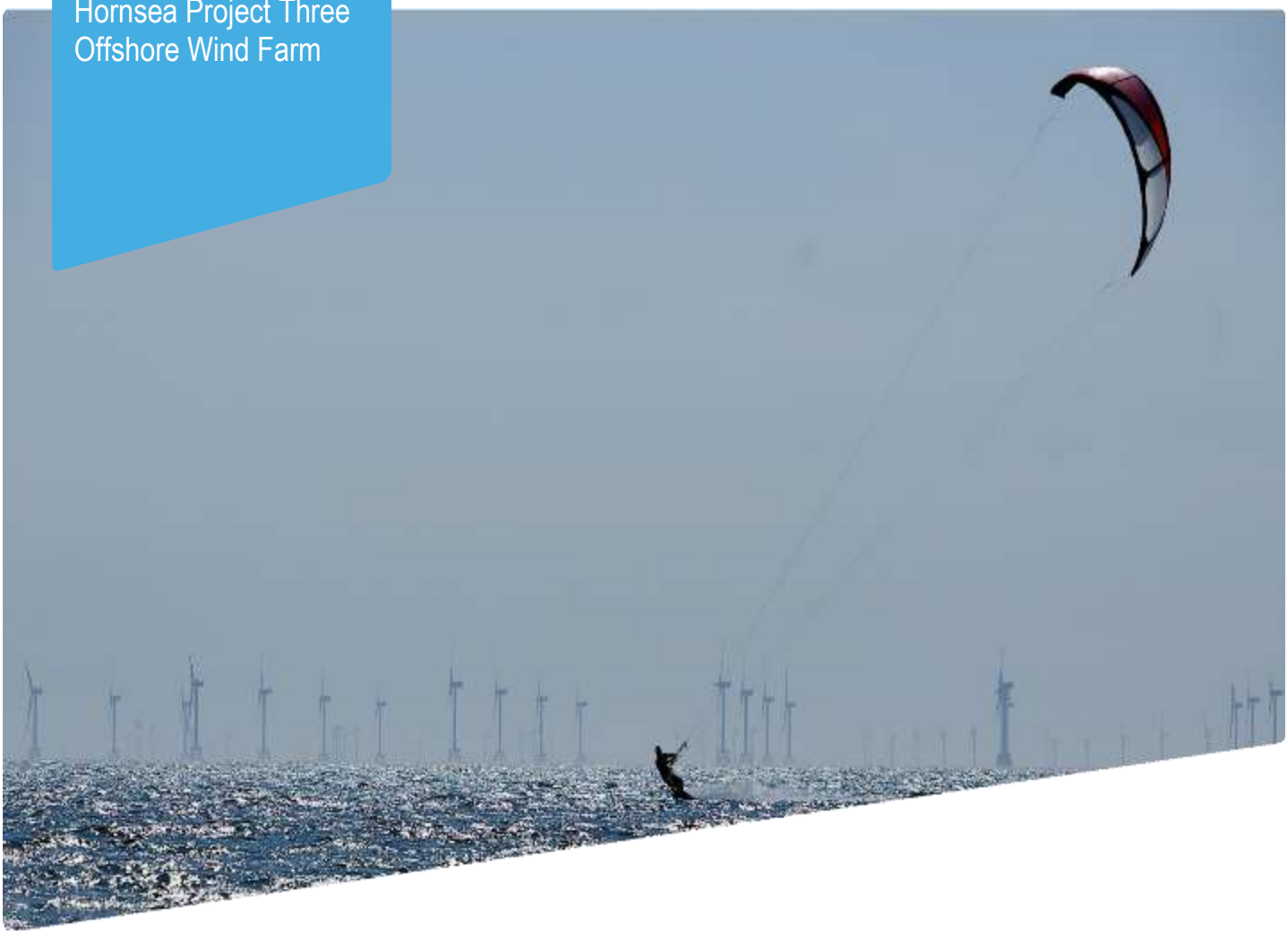
Hornsea Project Three
Offshore Wind Farm



Hornsea Project Three

Offshore Wind Farm

Written summary of Applicant's oral case put at Issue Specific Hearing 3 (6th Dec 2018)

Date: 14th December 2018

Hornsea 3
Offshore Wind Farm

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Front cover picture: Kite surfer near a UK offshore wind farm © Ørsted Hornsea Project Three (UK) Ltd., 2018.

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1. INTRODUCTORY REMARKS

1.1 Issue Specific Hearing 3 ("**ISH**") was held at 09:30am on 6 December 2018 at the Mercure Norwich Hotel, 121-131 Boundary Road, Norwich, NR3 2BA.

1.2 The ISH took the form of running through items listed in the agenda published by the ExA on 27 November 2018 (the "**Agenda**"). The format of this note follows that of the Agenda. The Applicant's substantive oral submissions commenced at item 3 of the Agenda, therefore this note does not cover items 1 and 2 which was procedural and administrative in nature.

2. AGENDA ITEM 1 – INTRODUCTION OF THE PARTICIPATING PARTIES

2.1 The ExA: - David Prentis (Lead Panel Member), Guy Rigby, David Cliff and Dr Roger Catchpole.

2.2 The Applicant:

2.2.1 **SPEAKING ON BEHALF OF THE APPLICANT: -** Gareth Phillips (Partner at Pinsent Masons LLP).

2.2.2 Present from the Applicant: - Andrew Guyton (Hornsea Three Project Manager), Meltem Duran (Concept and Layout Manager) Sarah Drljaca (Environment & Consents Senior Project Lead), and Karma Leyland (Senior Environment & Consents Specialist).

2.2.3 The Applicant's legal advisors: - Claire Brodrick (Pinsent Masons LLP) and Peter Cole (Pinsent Masons LLP).

2.2.4 The Applicant's consultants (listed alongside their relevant environmental topic area):

(a) Peter Gaches (Technical Director, GoBe Consultants Ltd)

2.3 Marine Management Organisation ("**MMO**"): represented by Zack Simons (Barrister, Landmark Chambers);

2.4 Natural England ("**NE**") represented by Charles Forrest (Barrister, Francis Taylor Building);

2.5 Historic England;

2.6 South Norfolk Council;

2.7 North Norfolk District Council;

2.8 Broadlands District Council;

2.9 Norfolk County Council; and

2.10 Land Interest Group (represented by Louise Staples of the National Farmers Union ("**NFU**").

3. AGENDA ITEM 3 – CONSISTENCY WITH ES

3.1 In response to queries from the MMO on various points related to the ES assessment as captured in the Development Consent Order ("**DCO**") and Deemed Marine Licences ("**DMLs**"), Peter Cole for the Applicant noted that whilst the length of cable is mentioned in both DMLs, condition 3 of each states that this is a total length for both licences. On a further point regarding the number of non-turbine structures, he confirmed that 21 was the correct figure rather than 19, as the maximum design scenario summarised in Table 3.9 of the Environmental Statement ("**ES**") project description chapter [APP-058] provides for up to six subsea HVAC booster stations or four surface booster stations, which would account for the

confusion. The Applicant agreed to discuss this further with the MMO outside of the hearings and have requested a telephone call.

3.2 In response to a comment from Natural England regarding a limitation on clearance volumes in designated sites, Gareth Phillips confirmed that this would be added to the next version of the draft DCO.

4. AGENDA ITEM 4 – ARTICLES

4.1 **Article 2 (Interpretation) including joint bay, link box, intrusive activities and maintain**

4.2 Mr Phillips confirmed in reply to an ExA question that the definitions of "joint bay" and "link box" could be amended to clarify the difference between the two, noting that this is clarified in the ES project description chapter [APP-058].

4.3 Regarding the definition of intrusive activities, in response to an ExA question, Mr Phillips confirmed that the words "but not limited to..." would be removed.

4.4 The ExA asked whether the definition of maintain should be amended to clarify that replacement related only to component parts of the project. Mr Phillips responded that in order to ensure consistency with the Hornsea Project Two DCO, this definition should remain as drafted. He further highlighted that this definition of maintenance limits activities to those assessed in the ES, therefore, the Applicant does not consider that further changes are required.

4.5 **Approach to onshore site preparation; extent to which preparation works are subject to environmental controls secured through the draft DCO**

4.6 Regarding the definition of onshore site preparation works, the ExA noted the removal of the word "demolition" since the application version of the draft DCO, but with the support of North Norfolk District Council ("NNDC") and South Norfolk Council ("**SNC**") noted that certain plans under the requirements of the draft DCO were not required before these works would be undertaken. Mr Phillips confirmed that the drafting was broader than previous DCOs, but reflected the experience of the Applicant on its projects that are under construction. Mr Phillips confirmed that an audit of the Requirements would be undertaken to ensure appropriate controls were in place for these works. The councils stated that they would discuss this with the Applicant directly, and noted consideration should be given to Requirements 8, 17 and 18. The Applicant has commenced discussions regarding this.

4.7 **Article 5(6) – whether appropriate to apply arbitration to a decision of the Secretary of State on the transfer of the benefit of the Order**

4.8 Mr Phillips confirmed in response to an ExA query that he was not aware of any instances of the Secretary of State causing delay during a transfer of benefit under a similar provision. However, the Applicant notes that there has never been a set process for obtaining consent to a transfer of benefit under a DCO, and in relation to transfers associated with other offshore wind farms the DECC/BEIS had sought clarity on how this should be undertaken. Therefore, the language of this provision builds in mechanisms to deal with this including a timeframe for the determination, and providing consistency and clarity for when arbitration would apply.

4.9 Specifically regarding arbitration, Mr Phillips confirmed that the Applicant is not seeking to make changes to the obligations and powers in relation to arbitration in other DCOs, rather provide clarification and speed up the process of dispute resolution. The arbitration provisions in past orders are very short and do not prescribe a process to follow. It is the Applicant's contention that the provision applies to all parties, and Mr Phillips referred to two applications where this was accepted by examining authorities and the Secretary of State (see Triton Knoll Offshore Wind Farm Order 2013 and the Burbo Bank Extension Offshore Wind Farm Order 2014, as referenced in the Applicant's response to ExA first written question 1.13.14 [REP1-122]). Regarding delay, where a project is subject to judicial review, Mr Phillips referred to the recent action by the RSPB against Neart na Gaoithe wind farm, this held up a project that would have been a nationally significant infrastructure project had it been in England from meeting the urgent national need for renewable energy. Mr Phillips submitted that given a judicial review claim can take up to 3 years to resolve, it cannot reasonably be suggested that such litigation offers an effective or expeditious means

for resolving disputes or differences arising under a DCO in respect of an energy related NSIP for which there is an urgent national need.

4.10 With reference to Article 36(1) of the draft DCO, the ExA offered the view that the term "Any difference under any provision of this Order" might not include a disagreement between the Applicant and the SoS or MMO in respect of a decision not to approve details submitted. Mr Phillips said he did not agree with that interpretation, nor was he aware of any authority to support such a restricted interpretation. In the absence of authority on the point, the Courts would consider the ordinary meaning of the word "difference", and on that basis the term could include a difference between the Applicant and SoS or MMO relating to a decision taken by those parties.

4.11 **Article 6 – whether appropriate to reflect elements of the approach to temporary possession set out in the Neighbourhood Planning Act 2017**

4.12 In reply to an ExA question asking whether elements of the Neighbourhood Planning Act 2017 should be incorporated into the DCO, Claire Brodrick advised that because the enabling regulations are not yet in force and have not been consulted on, it is not clear as to whether the 2017 Act would apply to temporary possession powers in a DCO for an NSIP. Until there is clarity, it is the Applicant's position that the period for notice for taking of temporary possession should remain at 14 days rather than 3 months as prescribed in the 2017 Act. Ms Brodrick highlighted that this position has been accepted by the Secretary of State on other DCOs granted since the enactment of the 2017 Act (see list provided in Applicant's response to ExA's first written question 1.13.18 [REP1-122]) and that the Applicant would prefer the flexibility of having 14 days' notice as this would allow the Applicant not to remain in possession longer than it has to.

4.13 **Article 7 (defence to proceedings in respect of statutory nuisance) - whether justified in the absence of any predicted nuisance**

4.14 Mr Phillips set out that Article 7 is a standard article for projects similar to Hornsea Project Three. Although no statutory nuisance is predicted, this article is a failsafe should any arise during construction. Mr Phillips explained that just because the Applicant hasn't predicted any nuisance doesn't mean that the Applicant should not be entitled to the defence afforded to other NSIPs. Mr Phillips also advised that the defence is not a protection to action against statutory nuisance, but simply provides a defence where, for example, mitigation fails. In respect of operational noise, Mr Phillips confirmed that Article 7 does not enable the Applicant to avoid compliance with Requirement 21. Mr Phillips agreed that the Applicant would take away to consider examples for how this article would be used in the construction and operational phases.

4.15 **Article 10 (temporary stopping up of streets) – whether 10(4) should refer to Schedule 3 instead of (or as well as) Schedule 4**

4.16 Mr Phillips confirmed this was a drafting error that would be amended in the next version of the draft DCO.

4.17 **Article 18 (time limit for compulsory powers) – justification for period of 7 years**

4.18 Regarding justification for a 7 year period for implementation and taking compulsory powers, Mr Phillips referred to discussions on phasing at ISH 1 including the two phases with a gap of up to 3 years between each phase. He summarised that the driver for phasing was the contract for difference ("**CfD**") regime. The next CfD auction will take place in May 2019, with a further auction every two years thereafter. As Hornsea Project Three will not have consent before the next auction, a bid would have to be made at the following auction. Mr Phillips advised the ExA that the Applicant understands that there will be a limit on the size of the auction in May 2019 of 2 to 4GW (with up to 2 GW per delivery year – there will be two delivery years in the 2019 auction), and it is currently unknown what the limit will be for future auctions and what other offshore wind farms will be competing for CfDs. Therefore, the Applicant needs flexibility to either submit a CfD bid for either a smaller phase of the project, should there be a lower cap and more competition, or all of it should the auction capacity is higher, and/or there is minimal competition.

4.19 Mr Phillips also noted that the supply chain for offshore wind is evolving and that whilst there are only two turbine suppliers currently, other companies may emerge, and therefore there may be a drop in cost of developing the project which will lower costs to consumers.

4.20 Mr Phillips stated that the three year gap between phases sought ties in to the phasing of the project as it takes about a year to prepare the bid for the auction, which will occur every two years. Mr Phillips added that due to the complexity of the project 7 years is reasonable, pointing to the Dogger Bank offshore wind farm projects where the Secretary of State permitted a 7 year implementation period. He summarised that whilst there is a commercial imperative for the applicant to deliver its project it is also necessary to do this in a cost efficient way.

4.21 In relation to compulsory acquisition rights specifically, Ms Brodrick added that if a shorter implementation period is granted, and the project is phased, it is possible that the Applicant would need to acquire rights over a greater area of land than may be ultimately needed in order to ensure that the Applicant has sufficient land for the maximum capacity of the second phase to ensure that it could be undertaken.

4.22 In response to comments on the terms of voluntary agreements and timeframes raised by the NFU, Ms Brodrick confirmed that the voluntary agreements do contain additional commitments by the Applicant on the basis that they are voluntary.

4.23 **Article 25 (temporary use of land) – whether the draft DCO provides clarity for landowners in a scenario where the project is delivered in phases; whether 25(f) should start with 'construct such'**

4.24 Replying to an ExA question on whether Requirement 6, relating to phasing, should make clear that temporary use will be in two phases, Mr Phillips confirmed that this is not required, as paragraph 1.1.3 of Appendix A to the Outline code of construction practice (**CoCP**) (Revision 1) [REP1-142] requires the Applicant to inform landowners of the proposed phasing of the authorised project, the land take and period of construction.

4.25 Ms Brodrick confirmed that Article 25(1)(f) should be amended to start "construct such works…".

4.26 **Article 40 (Crown rights) – whether appropriate to reflect recently approved drafting, for example in Article 37 of the East Anglia Three Offshore Wind Farm Order 2017**

4.27 Ms Brodrick confirmed that discussions between the Applicant and the Crown Estate were ongoing. She confirmed that the Applicant is hopeful that it can replace the wording to be consistent with previous DCOs, and an agreement with the Crown Estate to enable this to happen is almost in an agreed form.

5. AGENDA ITEM 5 - Schedule 1, Part 1 – the authorised development

5.1 **Whether appropriate to include the anticipated generating capacity within Schedule 1, as suggested by the Marine Management Organisation**

5.2 Mr Phillips explained that the Applicant's preference is not to specify a maximum generation capacity in the draft DCO and it is not necessary or desirable to do so.

5.3 Mr Phillips explained that the generating capacity of turbines can be increased without altering the physical parameters of the turbine, for example by making software upgrades to the computer management of them. Such an increase in capacity and the alterations enabling that do not give rise to environmental impacts. Even so, if the view is held that the language included in other DCOs, such as "generating capacity up to 1200MW" limits the generating capacity of the NSIP, then a non-material change application would be required to authorise an increase in capacity. An example of this is Hornsea Project One, where a non-material change application was required to authorise an increase in capacity of 18MW. That approach engages additional bureaucracy and delay in circumstances where there are no physical or environmental changes to consider.

5.4 Moreover, to limit the generating capacity of a renewable energy NSIP is not consistent with national policy, which seeks to increase renewable production and achieve decarbonisation.

5.5 The MMO confirmed it was content to leave this matter to the ExA and SoS to determine.

6. AGENDA ITEM 6 – SCHEDULE 1, PART 3 - REQUIREMENTS

6.1 **R2 (Offshore design parameters) – rationale for introducing a limit of 9km2 for the total swept area**

6.2 Meltem Duran explained that the total rotor swept area is calculated by multiplying the maximum number of turbines (300) by the rotor swept area of each turbine, given a maximum rotor diameter of 195m. Ms Duran added that this parameter was added to the DCO to allow the Applicant to select a turbine for the project in the future, while ensuring that the total impact of the selection remains within the maximum design scenarios assessed in the ES. There would be a range of sizes for different turbines according to the market options at the time, the rate of development of new turbine technologies and exactly how many would be built, therefore describing them all of the possible options by height or other parameters in the draft DCO would not be possible. As the Applicant does not yet know the exact technology to be employed, the drafting is to keep flexibility as far as possible within a range assessed in the maximum design scenarios. The total rotor swept area will assist as it controls the number of turbines and total swept area without falling outside of the project envelope.

6.3 Mr Phillips confirmed that the 9km2 rotor swept area is contained in Table 5.8 of Chapter 5 – Offshore Ornithology of the ES [APP-065] as a parameter for 300 turbines for collision mortality risk for colliding with moving blades.

6.4 **R6 (Phasing) – whether it would be appropriate to limit the number of phases to 2 in the interests of clarity and certainty**

6.5 Mr Phillips explained that when a written scheme for phasing is considered by the relevant planning authority, it would have to consider the ES, a certified document, which sets out that the project will be undertaken in up to two phases. With the exception of non-material amendments (authorised by Requirement 25), any matters outwith the ES would not be permitted. Therefore, it is not necessary to amend Requirement 6 as suggested.

6.6 Mr Phillips advised that the Applicant was concerned that introduction of the limit on phasing to Requirement 6 could create confusion, as this term can attract different interpretations, for example, this could relate to onshore or offshore phases, or different sub- phases of the onshore elements of the project. The MMO and NE shared this concern.

6.7 NNDC asked that Requirement 6 should be amended so as to provide NNDC with the power to approve the choice of transmission system, or at least notify NNDC of the reasons for the Applicant's choice of system.

6.8 In response Mr Phillips submitted:

6.8.1 NPS EN3 expressly supports flexibility in DCOs;

6.8.2 If the ExA and SoS are satisfied that: (a) it is appropriate to include flexibility in the DCO so as to authorise both types of transmission system; and (b) both systems have been adequately assessed in the ES, then there is no need, nor would it otherwise be reasonable, to include a Requirement prescribing a second approval mechanism - such a Requirement would fail the legal and policy tests for Requirements and conditions on consents;

6.8.3 There is disagreement between the local authorities as to the preferred choice of transmission system, but all have confirmed that neither system should be excluded from the DCO, and flexibility should be included. Therefore, a requirement for subsequent approval by the local authorities would likely lead to disagreement and delay; and

6.8.4 The local authorities would not have the expertise, nor could they cost effectively procure the expertise, required to assess and determine approval of the Applicant's choice of transmission system.

6.9 Mr Phillips added that the Outline CoCP (Paragraph A1.1.3, [REP1-142]) has requirements to provide information to landowners on the HVAC or HVDC choice.

6.10 **R8 (Landscaping) – whether the drafting makes clear that the detail of the landscaping itself (rather than just the management of the landscaping) is to be approved by the relevant planning authority.**

6.11 Mr Phillips confirmed in response to representations from Historic England that they could be added to this requirement as a consultee.

6.12 In response to questions from SNC and NNDC, Andrew Guyton confirmed that the landscape management plan would apply to both temporary and permanent works, and welcomed further discussion on this topic with the planning authorities.

6.13 Mr Phillips highlighted that any lack of clarity could be provided in subsequent plans approved under this condition. This would therefore provide flexibility both ways and prevent the need to amend the DCO.

6.14 In response to questions raised by SNC, Ms Brodrick referred to Articles 25 and 26 and confirmed that the DCO contained sufficient powers to enable the Applicant to take possession of land to carry out the maintenance of temporary and permanent landscaping for the duration of the time period specified in Requirement 9(2)

6.15 **R11 (Highway accesses) – whether amended drafting addresses a scenario where there is a material increase in use of an existing access (requiring some form of management) but there are no physical works.**

6.16 Mr Phillips noted this point and proposed to provide amended drafting in the next version of the draft DCO.

6.17 Regarding points on maintaining visibility splays raised by Norfolk County Council (**NCC**), Mr Phillips advised that the Applicant had no objection to the principle of this, but that additional land may have to be introduced to the application to facilitate this and the Applicant was proposing to make a non-material amendment application at Deadline 4. In respect of works to the parts of the visibility spay located within the highway, a power for this can be added to the street works powers provision of the draft DCO.

6.18 **R15 (Surface water) – update on alternative drafting proposed by Norfolk County Council; should 'and' be inserted after 'Environment Agency in (1)?**

6.19 Mr Phillips confirmed that this drafting issue had been resolved with revised drafting agreed with NCC which will be included within the next version of the draft DCO.

6.20 **R16 (Onshore archaeology) – update on discussions between the applicant and Norfolk County Council; Norfolk County Council to be the determining authority in R16(1)**

6.21 The local authorities confirmed agreement for NCC to be the approving authority and Mr Phillips confirmed that the DCO would be amended to reflect this.

6.22 **R20 (Restoration of land) - How would restoration be secured if the details were not approved?**

6.23 Mr Phillips explained that if there was no agreement as to restoration under this requirement, the fall back would be to use the arbitration or appeal provisions in the DCO. However, the reasonable expectation is that a restoration scheme would be approved. The councils agreed this approach.

6.24 In reply to a comment from the NFU, Sarah Drljaca confirmed that a soil management strategy would be will be implemented to ensure that recognised good practice is effectively implemented on site in accordance with paragraph 6.8.1.1 of the Outline CoCP [REP1-142].

6.25 **R21 (Noise during operation) – consider the appropriateness of specifying noise limits at identified sensitive receptors**

6.26 Ms Drljaca responded to the ExA's request to clarify why specific noise limits are not included in the DCO. She summarised that purpose of the noise management plan conditioned by Requirement 21 is to set noise limits, and identify the need for and location of mitigation. Inclusion of limits in the plan as

opposed to within the DCO would be helpful should a scenario arise where it is not possible to place mitigation at a noise sensitive receptor and therefore compliance would be based on a proportionate noise limit at an alternative location.

6.27 Ms Brodrick confirmed that whilst early DCOs contain specific noise limits, recent DCOs granted have moved away from setting specific noise limits on the face of the order and have utilised a management plan approach to take account of changing background noise levels.

6.28 **Possible additional requirement to secure the removal of temporary construction accesses and reinstatement of highway verges – update on discussions between the applicant and Norfolk County Council**

6.29 Ms Drljaca confirmed in response to a question from the ExA and comments from NCC that paragraphs 3.2.1.4 and 3.2.1.5 of the outline construction traffic management plan (CTMP) [REP1-146] provide obligations on the Applicant to remove temporary construction accesses. There is a further requirement for this in the outline CoCP, paragraph 4.1.6.2 [REP1-142].

6.30 **Any other matters on requirements**

6.31 The Applicant agreed to NCC's request to be added as a consultee on the local skills and employment plan to be approved under Requirement 22, and to make this requirement clear that it is for discharge prior to commencement.

6.32 Responding to comments from the councils, Mr Phillips stated that community benefits and business compensation funds matters are outside of the Planning Act 2008 regime because they are not related to mitigation, and therefore typically the ExA doesn't place weight on those. He acknowledged that the Applicant has delivered community benefit funds for multiple other projects and therefore has a good track record in relation to these, and that it is not appropriate to secure it in a DCO.

6.33 Regarding a query from NCC on how access to the main compound would be secured, Mr Phillips agreed to consider and discuss separately with NCC whether this should be delivered separately via a section 278 agreement.

7. AGENDA ITEM 7 – Schedules 11 and 12 - Deemed Marine Licences

7.1 **Paragraph 10 – whether it is appropriate for decisions of the Marine Management Organisation to be subject to arbitration**

7.2 Mr Phillips responded to representations made by the MMO and Natural England on the appropriateness of the arbitration provisions in the DMLs and Schedule 13 of the DCO:

7.2.1 Mr Phillips noted that there had been any detailed comments on Schedule 13 so far, and indicated the Applicant's willingness to consider comments on these provisions to help reassure the MMO and Natural England on the process being capable of being open and transparent, for example by hosting the documents on the MMO's website. He further pointed out that prior to arbitration occurring, the MMO would undertake the usual consultation in respect of details submitted for approval. The terms of Schedule 13 make provision for the MMO and NE to influence the arbitration process and terms of reference for the arbitrator.

7.2.2 On points raised concerning that this would usurp the authority of the MMO, Mr Phillips stated that this was not the case for the reasons set out in the Applicant's DL1 and DL2 submissions. Also, as an analogy, it is common for a local planning authority, another statutory body with statutory functions, duties and transparency obligations, to be bound by arbitration under a section 106 agreement. Whilst the LPA would voluntarily enter such an agreement, it would still be bound by and have regard to its statutory functions and duties when negotiating the terms of the section 106 agreement, and approving details submitted pursuant to obligations on the applicant/developer. Those circumstances are no different in practice to the MMO approving details submitted pursuant to DML conditions. There would be no usurping of authority.

7.2.3 Mr Phillips advised that the suggested alternative means of settling disputes, via judicial review, was not a good dispute resolution method as it is costly and time consuming, often taking up to 1-2, possibly 3, years to reach conclusion. This does not accord with the urgent need for renewable energy under National Policy Statements EN-1 and EN-3.

7.2.4 In response to assertions made by the MMO relating to parliamentary intention behind the Marine and Coastal Access Act 2009 (the MCAA), Mr Phillips said that the MMO had not offered any authority for its conclusions and assertions in that regard. Also, the Planning Act 2008 permits modification of other legislation, including the MCAA, and expressly provides that matters may be resolved by way of arbitration. Therefore, whatever the intention may have been when drafting the MCAA, that is irrelevant, because that legislation may be modified by the terms of a DCO.

7.2.5 Mr Phillips highlighted that the arbitration provisions as in the draft DCO had been adopted in the ExA's version of the Millbrook Power Station DCO during its examination, which has now closed. The drafting has also been adopted by the applicant, Vattenfall, for the Norfolk Vanguard and Thanet, offshore wind farm DCO applications. Vattenfall has separate legal representation, and has clearly come to its own the conclusion that the provisions are lawful and necessary.

7.2.6 Mr Phillips reiterated the point that the Burbo Bank Extension DCO and Triton Knoll DCO examining authorities and the Secretary of State had already decided that statutory nature conservation bodies should be subject to the arbitration provisions. He quoted the ExA's and SoS's conclusions from those decisions "all issues and parties should be equally subject to arbitration on the same basis". That could not be clearer and sets a precedent for the arbitration provisions in the DCO for Hornsea Three to apply to all parties including the SoS, MMO and NE.

7.2.7 Mr Phillips asked the question, if SNCBs like Natural England and Historic England, and the MMO and Secretary of State are not bound by the arbitration provisions in this and previous DCOs, which parties are bound by them? Based on the submissions made by the MMO and NE, arbitration provided for under the model provisions would not seem to bind any party save for the Applicant. That cannot be correct. Rather, the previous decisions of the SoS are correct, i.e. that all parties and issues arising under a DCO should be subject to arbitration.

7.3 **Condition 8 (Aids to navigation) – suggestion from Defence Infrastructure Organisation that aviation lighting is dealt with by a separate condition**

7.4 Mr Cole updated the ExA that following comments from the Defence Infrastructure Organisation, the next draft of the DCO will remove reference to it from Condition 8, so that this would relate only to surface navigation. Condition 9 will be amended so that the Applicant has to exhibit lights as required by the Air Navigation Order 2016, in consultation with the Defence Infrastructure Organisation and the Civil Aviation Authority. Karma Leyland confirmed that this had not been discussed with the Defence Infrastructure Organisation, but the wording had been used in previous DCOs.

7.5 **Condition 13 (Pre-construction plans) – consider the scope for micro-siting and any effects that may have; whether a layout in accordance with the design principles should be subject to approval; update on approach to archaeological exclusion zones**

7.6 Ms Leyland confirmed in response to an ExA question that the Applicant will undertake geophysical and technical surveys with respect to archaeological and environmental features. Once these surveys are complete, Ms Leyland advised that the Applicant would create the final design and submit it to the MMO for approval. The pre-construction surveys would provide confidence for micro-siting within a 50m range. Ms Leyland confirmed that through this process features could be identified and reported on, with a post consent integrity survey that verifies the locations of the turbines for feedback to the MMO.

7.7 Peter Gaches noted that Conditions 13(7), (8) and (9) of the of dML should have been removed in the version of the DCO submitted at Deadline 1. The control afforded by this text had been updated (following a request from the MMO and Natural England) to a commitment to a Site Integrity Plan, the wording for which is within Condition 13(5). The old wording is therefore, no longer required.

7.8 **Condition 14 – timescale for MMO decisions**

7.9 Mr Phillips responded to points made by the MMO and Natural England requesting an amendment of the timescale in condition 14(1) for submitting details under condition 13 from four months to six by comparing the time frames to applications under the Town and Country Planning Act 1990, under which local authorities have eight weeks to decide substantial condition discharge applications. In addition, a planning performance agreement between the MMO and the Applicant was under discussion to assist with resourcing of responses to discharge applications such as this. Also, the conditions allow for an extension of time by agreement between the parties.

7.10 Mr Gaches noted that in his experience document approval for many of the pre-commencement documents is a straight forward, efficient process, often resulting in approval being secured well within the 4 month timeframe. Furthermore, this is includes direct experience from similar scale Round 3 projects, noting that a number of the plans required under Condition 13 of the dMLs are industry standard documents. Mr Gaches did acknowledge that there are documents (such as some of the more complex monitoring plans) where a reasonable timeframe is required to agree the content of the document to the extent that it can be approved. In such circumstances it is common practice to engage with both the MMO and relevant stakeholder considerably in advance of the 4 month submission date to develop the content of such documents. Mr Gaches noted that it will be in its interest of all parties to commence discussions on these documents early (i.e., before the 4 month submission date). The Applicant does not consider it normal for documents to be issued to the MMO for approval without any prior engagement on the content. Therefore, the 4 months must not be viewed as the start of the process. Not withstanding this, Mr Gaches indicated that the Applicant would be open to further discussions with interested parties on amending the timeframe for submission of certain pre-commencement documents.

7.11 **Conditions 17 to 23 – approach to surveys and monitoring**

7.12 Mr Gaches summarised that these new provisions are intended to return to the traditional monitoring requirement, after a previous attempt to streamline them. Mr Gaches stated that the Applicant had increased the scope of the monitoring commitments in a number of areas in light of comments received from interested parties at Deadline I and he now was of the opinion that the conditions (and supporting updated in-principle monitoring plan) should be acceptable to all. Mr Gaches welcomed the indication from Natural England that they were broadly content with the updated conditions, and the acknowledgement from the MMO that they would respond at Deadline 3 with any residual points of clarification.

7.13 Mr Gaches noted that the request from Natural England for an extension to the existing noise monitoring commitment (at 18(3)) to the extent that if the noise monitoring showed that results were greater than presented in the ES then the undertaker would cease piling until the matter was resolved (with the MMO) was not necessary or appropriate as the undertaker has to provide the MMO with the noise modelling reports within 6 weeks of the monitoring, at which point if the MMO have concerns they have the regulatory powers to stop piling until their concerns have been resolved should they deem it necessary. Therefore, no further modification of the dML is required in this regard.

7.14 **Schedule 12 (transmission assets), Condition 14(1) - whether a layout in accordance with the development principles set out in the ES should be subject to approval**

7.15 Mr Phillips confirmed that this condition needs to be amended to reflect the equivalent condition in Schedule 11, so as to make the layout details subject to approval by the MMO.

7.16 **Schedule 12, Condition 15 – timescale for MMO decisions**

7.17 The parties agreed this had been dealt with under the Schedule 11 discussions.

7.18 **Schedule 12, Conditions 18 to 23 – any further matters relating to surveys and monitoring which are specific to the transmission assets DML**

7.19 The parties agreed this had been dealt with under the Schedule 11 discussions.

8. AGENDA ITEM 8 – Other DCO matters

8.1 **Schedule 13 (Arbitration rules) – approach to costs and confidentiality**

8.2 Mr Phillips agreed to make a drafting amendment to paragraph 6(4) to clarify the position on costs. He reiterated a desire of the Applicant to receive comments from the MMO and Natural England on the detail of Schedule 13, if necessary on a without prejudice basis.