

From: Dominika Phillips [mailto:DOMPH@orsted.co.uk]
Sent: 08 February 2019 21:06
To: KJ Johansson; Kay Sully; Hornsea Project Three
Cc: Andrew Guyton; Stuart Livesey
Subject: Hornsea Project Three (UK) Ltd response to Deadline 6 (Part1)

Dear Kay, K-J

We are pleased to enclose Ørsted Hornsea Project Three (UK) Ltd (“the Applicant”) response to Deadline 6, Friday 8th Feb 2019. 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”).

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



Environmental Management UK| Wind Power
5 Howick Place | London | SW1P 1WG



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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 6 (30th Jan 2019)

Date: 8th February 2019

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Table of Contents

1.	INTRODUCTORY REMARKS	1
2.	AGENDA ITEM 1 – INTRODUCTION OF THE PARTICIPATING PARTIES	1
3.	AGENDA ITEM 3 – CONSISTENCY WITH ES	1
4.	AGENDA ITEM 4 – ARTICLES	1
5.	AGENDA ITEM 5 – SCHEDULE 1, PART 3 - REQUIREMENTS	2
6.	AGENDA ITEM 5 – SCHEDULES 11 AND 12 – DEEMED MARINE LICENCES	3
7.	AGENDA ITEM 7 – PROTECTIVE PROVISIONS	5
8.	AGENDA ITEM 8 – CODE OF CONSTRUCTION PRACTICE	5
9.	AGENDA ITEM 9 – OTHER DCO MATTERS	8

1. **INTRODUCTORY REMARKS**

- 1.1 Issue Specific Hearing 6 ("ISH") was held at 09:30am on 30 January 2019 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 were 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: - Stuart Livesey (Project Manager), Andrew Guyton (Hornsea Three Consent Manager), Meltem Duran (Concept and Layout Manager), Karma Leyland (Senior Environment & Consents Specialist), Felicity Browner (Senior Environment & Consents Specialist), Richard Grist (Land and Property Manager) and Celestia Godbehere (Onshore Environmental Manager).
- 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); and
 - (b) Dr Kevin Linnane (RPS).

3. **AGENDA ITEM 3 – CONSISTENCY WITH ES**

- 3.1 Responding to ExA questions and MMO responses on site characterisation disposal volumes being explicit in the draft Development Consent Order ("DCO"), Dr Kevin Linnane for the Applicant highlighted table 2.2 of the Dredging and Disposal (Site Characterisation) report [APP-086]. This provided the spoil volume associated with seabed preparation activities. Dr Linnane stated that as outlined in the Applicant's Deadline 2 response on this point (REP2-004), the apparent discrepancy between this and the DCO is because the final design scheme would not require all HVAC booster substations and all HVDC substations within the array and that HVAC represents the maximum design scenario for the project as a whole. As such, the 193,960 m³ quantity of drill arisings for HVDC converter substations are not included in the total in the DCO.
- 3.2 The MMO confirmed it was content with the clarification provided at Deadline 2.

4. **AGENDA ITEM 4 – ARTICLES**

- 4.1 **Article 2 (Interpretation) - including joint bay, link box, outline written scheme of investigation**
- 4.2 Gareth Phillips on behalf of the Applicant confirmed that the definition of 'Outline Written Scheme of Investigation' should be changed to 'Outline Offshore Written Scheme of Investigation', given the introduction of a definition for 'Outline Onshore Written Scheme of Investigation'.
- 4.3 **Article 7 (Defence to proceedings in respect of statutory nuisance) - whether justified in the absence of any predicted nuisance**

4.4 In response to an ExA question, Mr Phillips confirmed that previous DCOs had included an article similar to Article 7 with blessing by the Secretary of State, regardless of whether nuisance was predicted. He stated that the article was justified as it clarifies how the DCO relates to the Control of Pollution Act. Mr Phillips stated that nuisance could arise despite the predictions of the Environmental Statement, not only where mitigation failed, as he had stated at the previous issue specific hearing on the DCO, but for example where there was compliance in all other respects including Article 21, but machinery was temporarily noisier than it should be.

4.5 **Article 14 (Power to alter layout etc. of streets) – new article**

4.6 Mr Phillips confirmed that Article 14 was intended to allow the alteration of streets and passing bays during both the construction and operation phase. Replying to an ExA question, Mr Phillips advised that measures which could take place during the operational phase include temporary adjustments to roads, for example to facilitate abnormal load deliveries, which may necessitate the altering the layout of a street. Mr Phillips confirmed that this Article would also enable the Applicant to put in place temporary passing bays along The Street at Oulton, which have been agreed in principle by NCC.

5. **AGENDA ITEM 5 – SCHEDULE 1, PART 3 - REQUIREMENTS**

5.1 **R5 (Offshore design parameters) – limit on number of cable crossings**

5.2 Answering a question from the ExA on requirement 5, Peter Cole for the Applicant advised that the limit of 44 cable crossings relates to the number of assets crossed, rather than the number of cables within the project which would cross each existing asset. This will be more clearly defined in the DCO. Mr Phillips confirmed that the Applicant would provide an updated DCO for Deadline 6.

5.3 Felicity Browner for the Applicant added that the total volumes as stated in the DCO are still correct. The MMO confirmed that it was content that the maximum crossing numbers and volumes in DCO were correct.

5.4 **R6 (Phasing) – review new wording**

5.5 On requirement 6, Mr Phillips advised the ExA that the new wording provided at Deadline 4 related to the project being built out in two phases, and sub phases are referred to as stages. The written scheme to be approved under requirement 6 would set out details relating to this.

5.6 Following a suggestion from North Norfolk District Council (“NNDC”) that confirmation of the choice of HVAC or HVDC would be better placed in requirement 6, not 7, Mr Phillips confirmed that this could be feasible, although requirement 7 sets out the Work Nos which are dictated by the choice of technology. The details supplied per requirement 7 would make it obvious which technology has been chosen. Further, the Applicant advised that the phasing of the project would not affect the choice of transmission system or vice versa, and hence would consider requirement 7 to be a more appropriate location. For example, if Hornsea Three is to be constructed in two phases, the transmission system for phase two may not be known at the time that requirement 6 is discharged. The Applicant understands that NNDC will propose drafting for the Applicant to consider at Deadline 6.

5.7 Responding to a comment by the Land Interest Group, Stuart Livesey, for the Applicant, confirmed that Hornsea Project 4 was one or two years behind Hornsea Project Three and still subject to statutory and non-statutory consultation, which would substantially evolve the project. As such, Hornsea Project 4 has not been finalised as a single phase project.

5.8 **R8 (Landscaping) and R9 (Implementation of Landscaping) – review new wording and appropriate maintenance period**

5.9 On Requirement 8, Andrew Guyton for the Applicant answered an ExA question on the title of the ‘Outline Landscape Management Plan’ and explained that references to this document in the DCO have been amended to remove “Management” as suggested by and agreed with the relevant planning authorities. Mr Guyton advised that the change would be made to all documentation at Deadline 6.

5.10 Following an indication from NNDC that it and the other local authorities were discussing the drafting of

this requirements as well as wording to be included within the Outline Landscape Plan, Mr Phillips asked the local authorities to provide their proposed updated drafting for requirements 7 and 8 as soon as possible to allow the Applicant to have an agreed drafting position for its proposed submission at Deadline 6 of an updated DCO. Mr Phillips also stated that should evidence for the imposition of 10 year maintenance requirements in planning permissions be provided by the local authorities, this would be helpful to some degree, but that the approaches in applications under the Planning Act 2008 and Town and Country Planning Act 1990 were different. He argued that often applicants under the 1990 Act would agree conditions in order to obtain consent without thorough consideration of the condition that would occur in a 2008 Act application. Mr Phillips stated that the Applicant would expect the local authorities to provide evidence for why this particular project should have the ten year period. The Applicant has not received any revised drafting from the local authorities prior to Deadline 6.

5.11 On NNDC's request that requirement 8 be amended to provide a list of matters to be included in the landscape plan, as per previous DCO projects, Mr Phillips stated that the basis of the DCO was the most recent offshore wind farm orders, and as such, requirement 8 is usual. It was the Applicant's intention for the Outline Landscape Plan to contain the list of matters that need to be included in the final landscape plan. Not having a prescriptive list of matters included within the requirement would allow flexibility for both sides given that the process to amend the DCO is more cumbersome than amending the actual content of the landscape plan. Mr Phillips mentioned that where a plan had already been submitted and approved, the DCO would permit a change by any party. This would be a better means to deal with changes rather than a change to the DCO requirement.

5.12 Mr Phillips confirmed in reply to Historic England that the error on their formal title would be amended.

5.13 Regarding South Norfolk Council ("SNC") comments that it could accept requirements 8 and 9 if the wording within the Outline Landscape Plan was tightened to identify issues which would otherwise be referenced in the wording of the requirement, Mr Phillips agreed. He explained that the Applicant's approach has been to establish the principles which must be followed but maintain flexibility by having outline documents which identify the details the parties expect to be in the final version of the document. Mr Phillips requested that the local authorities therefore focus on the detail they require in the Outline Landscape Plan rather than the DCO itself, as this would help post consent as there would be no need for an amendment application for any changes to the DCO, and also management plans would not be limited to legal drafting language.

5.14 **R22 (local skills and employment) – to note separate elements for Norfolk and NE Lincolnshire**

5.15 Mr Phillips confirmed agreement to Norfolk County Council's request to be a consultee to the draft skills and employment plan that they would approve under requirement 22. He also updated the ExA that North East Lincolnshire Council ("NELC") had been notified of their inclusion in the requirement in relation to their area, but the Applicant had not yet heard back on this. Mr Phillips advised that whilst NELC is located entirely outside the red line of the project, and agreed with the ExA that their inclusion in the DCO was therefore unusual, this measure was required to deliver the benefits set out in the ES to the region. As the skills and employment plan affects a wider area, the Applicant considers NELC's inclusion is justified in this context.

5.16 **R23 (onshore decommissioning) – review new wording**

5.17 Mr Phillips agreed with ExA and NNDC comments on the drafting of the three month period for approval by the relevant planning authority and confirmed this would be amended in the next DCO. Additionally, the ExA's comment that the agreement in writing should be "by the relevant planning authority" was also agreed.

6. **AGENDA ITEM 5 – SCHEDULES 11 AND 12 – DEEMED MARINE LICENCES**

6.1 **Paragraph 10 – whether it is appropriate for decisions of the Marine Management Organisation to be subject to arbitration – consideration of alternative appeal mechanisms**

6.2 Mr Phillips advised the ExA that the next draft of the DCO would include proposed modifications, on a without prejudice basis, to allow the existing appeal process for marine licences to apply to the approval of deemed marine licence ("DMLs") conditions.

- 6.3 Mr Phillips advised the ExA, in answer to a question, that once the DCO and DMLs are granted jurisdiction is handed to the MMO and matters such as amendments considered by the MMO.
- 6.4 Mr Phillips stated that, as a point of principle, difficulty would arise as a consequence of multiple appeal processes in place, as most disputes arise between the Applicant and non-determining bodies involved in condition discharge (such as the Maritime and Coastguard Agency and Trinity House). The arbitration process should still apply to these bodies in order for such decisions to be concluded where there are differences of opinion.
- 6.5 Regarding authority on the meaning of arbitration clause, Mr Phillips advised that there was no case law authority on this, however, the Secretary of State had twice opined on this issue and concluded that all parties should be subject to arbitration.
- 6.6 In response to Natural England (“NE”) confirming opposition to the use of the appeal process, Mr Phillips stated that the proposed alternative of using the judicial review process was not acceptable. As stated in the Applicant’s previous representations, the judicial review process is not only time consuming, possibly taking two years; it is also costly for all parties to reach court. This, Mr Phillips stated, would undermine the National Policy Statement which outlines urgent need for the project. The proposed appeal mechanisms would be a common sense and logical solution. Mr Phillips requested that NE assist in trying to close out issues rather than focussing on objections in principle.
- 6.7 **Condition 2 – new limits on number of cable crossings and on works within Markham’s Triangle**
- 6.8 In response to a question from the ExA, Mr Phillips confirmed that the figure in condition 2(9)(e) is a total volume for cable protection, based on 10% cable protection during construction and operation phases and 25% replenishment of the cable protection.
- 6.9 Mr Phillips confirmed that the reason the limitation in condition 1 on scour protection around offshore infrastructure was based on a volume and an area, whereas cable protection limitations refer to volume only, is due to a previous request for clarification over cable crossings which has since moved on. The current approach for cable crossings is that the Applicant would provide a cable installation plan which sets out areas required at the relevant stage. This would be in the form of an outline plan followed by a detailed version.
- 6.10 Regarding the contingency of condition 2(9) being implemented should Markham’s Triangle MCZ be designated an MCZ, Mr Phillips advised the ExA that this was because an MCZ would require a greater level of control than an undesignated site. In the event that the designation is not granted, the threshold of control necessarily reduces as the rationale for the condition is because the site may be an MCZ. In terms of timing of the designation, Mr Phillips stated that he would have expected designation prior to detailed design of the project, but the design team would work on the basis that MCZ status would be granted.
- 6.11 Dr Linnane confirmed to the ExA that cable protection would only be applied to 10% of cables laid within each designation. This footprint and the volumes of cable protection within each designated site (as assessed within the Environmental Statement and the RIAA) would be outlined within the relevant sections of the outline cable specification plan (i.e. the cable protection plan), a final version of which is secured under the DMLs under condition 13(1)(h) of Schedule 11, and condition 14(1)(h) of Schedule 12.
- 6.12 Dr Linnane confirmed, in response to ExA questions as to whether the assessment included replenishment of rock protection, that 25% replenishment (of the 10% cable protection) is included in the total volume for the project and the maximum volumes considered within designated sites. It was also clarified that that assessment considered placement of cable protection during the construction phase and remedial cable protection which may be required at any point during the operation and maintenance phase, assuming protection of up to a maximum of 10% of export cables over the project lifetime. The outline cable specification and installation plan is intended to ensure that there is clarity for the MMO and NE on cabling impacts (including placement of cable protection) within designated sites, ensuring all impacts are within the DCO limits (i.e. volume and footprint) and the maximum design scenario considered within the Environmental Statement and RIAA. Following feedback from MMO and NE on the outline cable specification and installation plan (expected to be obtained at Deadline 6), the Applicant can update this outline plan to include the maximum design scenarios for cable protection within each

designated site, including replenishment to ensure clarity on this point.

6.13 Mr Phillips confirmed that the DCO would be updated to reflect confirmation at the hearing from NE that Markham's Triangle is now a recommended MCZ, not a proposed MCZ.

6.14 **Condition 10 (Aviation safety) – new wording regarding aviation safety lighting**

6.15 Karma Leyland, for the Applicant, confirmed to the ExA that the change was suggested by Trinity House, and that the Defence Infrastructure Organisation and CAA had agreed that the wording of the condition, and the Applicant had moved it to the appropriate position in condition 10.

6.16 In reply to the MMO's request to have timing for notification added to this condition, Ms Leyland agreed to take the point away. The dDCO submitted for Deadline 6 has been amended accordingly.

6.17 **Condition 13 (Pre-construction plans) – update on approach to archaeological exclusion zones, sandwave clearance and cable protection**

6.18 In relation to approval of the sandwave clearance plan and cable protection plan, and an MMO comment on the timing of the monitoring under these conditions, Peter Gaches for the Applicant advised that the monitoring required for these plans would have been already dealt with under condition 17 (noting that pre-construction monitoring will be well in advance of construction activity taking place). He confirmed that the information relating to monitoring under condition 13 for these plans would therefore represent a summary of the approved relevant monitoring plans.

6.19 **Condition 14 – timescale for MMO decisions – update on any discussions**

6.20 Following submissions from Historic England (“HE”) relating to the timing of the offshore written scheme of investigation, Mr Phillips asked the ExA to consider previous submissions on the timing point, considering the balance between expedition and the resources of the parties involved.

6.21 **Condition 17 (Pre-construction surveys) – new wording relating to archaeological exclusion zones**

6.22 Ms Leyland agreed to take away comments by HE that the side scan and swath bathymetric survey should extend to 100% of the offshore export route.

6.23 **Condition 18 (Construction monitoring) whether provision should be made for piling to stop if noise exceeds predictions**

6.24 Mr Phillips advised that the Applicant's case is that the MMO's proposed condition on cessation of piling was duplicative and not required, but that it would be included in the next draft DCO on a without prejudice basis for the ExA to consider for its draft DCO.

7. **AGENDA ITEM 7 – PROTECTIVE PROVISIONS**

7.1 **Cadent Gas and National Grid**

7.2 Mr Phillips informed the ExA that these parties had not appeared at the hearing as private agreements had been reached which would be signed within the next week or so. He confirmed that there would be no changes to the DCO relating to these parties, save for some minor tweaks.

7.3 Mr Phillips further advised that National Grid Electricity Transmission's agreement may take longer to settle as it relates to compulsory acquisition powers. The heads of terms have been settled but the associated property document is yet to be agreed, which will hopefully be prior to the close of examination.

8. **AGENDA ITEM 8 – CODE OF CONSTRUCTION PRACTICE**

8.1 **Relationship of the Outline CoCP with the detailed CoCPs**

8.2 In response to an ExA question, Mr Phillips advised that contractors would be bound by the Outline Code of Construction Practice (“CoCP”) [REP4-023] by virtue of the outline plan being incorporated into the final (detailed) version. This may, he added, be by references made in the detailed plan to the outline plan.

8.3 Mr Guyton confirmed that if the relevant authorities had no additions to make to the outline CoCP, it would be converted into the detailed CoCP.

8.4 Claire Brodrick, for the Applicant, confirmed that there would be one overarching CoCP for all works, with detailed CoCPs relating to specific works under that for discrete areas, such as the construction of the onshore booster station. All CoCPs would have to be approved by the relevant planning authority prior to commencement of works, and works could not commence without a CoCP for those works.

8.5 **Onshore construction method statements**

8.6 Responding to an ExA question relating to paragraph 1.3.2.1 of the outline CoCP, Ms Brodrick confirmed that the intention for this paragraph is that relevant method statements required would be annexed to the appropriate CoCP prior to the main approval process, if this required input/approval from a party other than the relevant planning authority. This would help ensure that the more detailed method statements were developed by construction contractors within the principles established in the Outline CoCP and practices adopted in the detailed CoCP.

8.7 **Environmental management**

8.8 In relation to an ExA comment on paragraph 2.2.1.2 relating to the obligation to comply with the DCO commitments “as far as reasonably practicable”, Mr Guyton confirmed the intention of this wording was to cover situations where a health and safety measure may prevent or be inconsistent with the principles established in the Outline CoCP. Mr Guyton advised that the Applicant reconsider this wording. The Outline CoCP submitted for Deadline 6 has been amended to address this point.

8.9 **Accompanying plans to CoCP**

8.10 Ms Brodrick advised the ExA that the final approved CoCP must be in accordance with the Outline CoCP, which would include all plans currently annexed to the Outline CoCP. Therefore, the final CoCP would have final versions of the plans annexed to the Outline CoCP and these would all be approved by the relevant planning authority.

8.11 Mr Guyton added that whilst the relevant planning authorities would at the final CoCP stage have the opportunity to clarify and refine construction management measures, for example, the communications plan (as set out in Appendix A to the OCoCP), both parties (the Applicant and relevant planning authorities) would be bound by the principles established in the Outline CoCP.

8.12 Ms Brodrick confirmed in response to an ExA query that the relevant planning authorities had been asked for comments on the Outline CoCP, and this was being updated throughout the Examination in response to any comments received.

8.13 **General requirements**

8.14 Mr Guyton agreed to take away and provide a response at Deadline 6 to a point made by NNDC requesting notification and consent for use of generators during continuous working as per paragraph 4.1.1.5 (subsequent amendments have been made to the Outline CoCP submitted at Deadline 6).

8.15 Mr Guyton confirmed that on core working hours the Applicant would check in response to comments from NNDC that there are no potential conflicts between these as set out in the Outline Construction Traffic Management Plan and Outline CoCP (The Applicant has now reviewed the documents and confirms that the Outline CTMP and Outline CoCP are aligned).

8.16 Regarding waiting areas for HGVs, Mr Guyton stated that the intention is that there should be no vehicles

waiting around the construction areas. Mr Guyton clarified that under the Outline CoCP, a driver, aware of arriving early, would find somewhere appropriate to stop on the route but there would not be a later agreement for specified stopping points.

8.17 In response to a comment by SNC on where HGVs would stop, Ms Brodrick advised that HGV drivers factor availability of parking into route planning, and may have to stop further away, then continue so that they arrive within agreed working hours.

8.18 **Mechanism for approval of matters within the CoCP**

8.19 Ms Brodrick, responding to a request for clarification from NNDC on the Applicant's response to Q2.15.6 relating to further time for applications under the Control of Pollution Act, stated that there was no proposed activity considered complex enough to justify the requested extension. Ms Brodrick confirmed that the Applicant had updated paragraph 4.1.1.6 of the Outline CoCP to provide further clarity on the details to be provided by the Applicant on what consent is sought for. Therefore, it would be clear what any consultation related to.

8.20 Following further discussions regarding what activities would be considered complex, and whether the time period could be extended, and how, the Applicant agreed to take the discussion on this issue away to discuss with NNDC. The Applicant understands that NNDC will propose drafting for the Applicant to consider at Deadline 6.

8.21 In response to an ExA question on the process for reaching agreement on documents such as the Pink-Footed Goose Management Plan, Ms Brodrick confirmed that it was envisaged that the detailed CoCP submitted for approval under the requirement would include details and plans already agreed with the relevant party. For example, for the Pink-Footed Goose Management Plan, this would be agreed with NE then submitted to the relevant planning authority as part of the detailed CoCP(s). Ms Brodrick agreed that the Applicant would review the Outline CoCP wording to respond to a clarification request from NNDC on the sequence for approval.

8.22 Mr Phillips stated, following comments from SNC on a lack of clarity on timings, that the DCO transposes the 1990 Act timeframes for the discharge of requirements. The Applicant was happy to discuss the timings with the relevant planning authority outside of the hearing

8.23 To clarify in response to a point by the NFU on field drainage plans, Ms Brodrick confirmed that the relevant planning authority would approve details for the drainage requirement. The Applicant has stated in the Outline CoCP that it would take into account the representations of landowners, but this is a document for the relevant planning authority to approve. Ms Brodrick stated that separately there would be individual agreements with landowners outside this process if specific works were needed.

8.24 Richard Grist, for the Applicant, addressing further comments from the NFU on consultation on drainage, stated that there is sufficient drainage consultation, as paragraph 6.4.1.14 of the outline CoCP made reference to restoration of field drainage being in consultation with the landowner. He added that paragraph 6.8.1.6 also requires existing water supplies to be maintained and reinstated, and for the Applicant's liaison officer to liaise with each landowner on those points. Mr Grist also highlighted that Appendix G, the soil management strategy is provided with the outline CoCP.

8.25 Ms Brodrick added that it would not be appropriate for there to be approval by individual landowners for this type of document, as it applies to the whole route, and there may be locations where the owner will not permit access and compulsory powers are relied upon.

8.26 **Pollution Prevention**

8.27 Responding to an ExA query on CoCP paragraph 6.4.15 on how the final bentonite breakout plan would be approved by the Environment Agency, Ms Brodrick stated that the final CoCP would annex an approved plan, as it would be in accordance with the Outline CoCP. She continued that the final breakout plan (to be attached to the final CoCP) would be discussed with the Environment Agency once further details regarding the detailed design are known.

8.28 **Onshore ecology and nature plan**

8.29 Mr Guyton noted the ExA's query on section 6.5 of the Outline CoCP and its crossover with the Outline EMP and stated that the Applicant would review and remove any duplication between the two, with details relating to ecology remaining in the outline ecological plan where conflict arose.

8.30 Celestia Godbehere clarified in response to an ExA query that the onshore written scheme of investigation clearly states that it is applicable landward of mean high water springs, whilst the offshore written scheme of investigation covers the intertidal and offshore area.

8.31 **Any other CoCP issues**

8.32 Replying to comments from NNDC, Mr Guyton advised that the Applicant would share noise complaints with the local authorities, and would consider timings for this so that there are clear expectations from both parties on how long a report would take from the contractor to the local authority and vice versa. The Outline CoCP submitted for Deadline 6 has been amended to address this point.

8.33 Regarding the request from NNDC for permanent instead of temporary fencing as set out in paragraph 4.1.7.9 of the CoCP, Ms Brodrick highlighted that requirement 12 required temporary fencing to be approved in accordance with the CoCP. Therefore, she stated, where there are detailed CoCPs, these would lead to separate approvals for fencing as necessary. The CoCP states that noise management is required so where fencing would be suitable mitigation, this would be considered as part of that. Ms Brodrick added that 6.2.1.3 of the CoCP states best practical means are required to deal with noise, including enclosures.

8.34 Regarding NNDC comments on the complaints procedure complying with the Data Protection Act, Ms Brodrick advised that the complaints procedure would comply with the legislation at the time it is put together. She stated that there was no need to state in the Outline CoCP that the Applicant would comply with this statutory obligation.

9. **AGENDA ITEM 9 – OTHER DCO MATTERS**

9.1 **Schedule 13 (Arbitration rules) – update on discussions**

9.2 Mr Phillips informed the ExA that NE were the only party to provide comments on Schedule 13 so far, although others were welcome to do so, preferably before Deadline 6. Mr Phillips advised that those comments from NE had been addressed.

9.3 Following submissions from NE on rule 6 relating to costs, Mr Phillips stated that the costs of the arbitration should be shared between the parties, rather than being paid only by the undertaker. Unlike an appeal, as mentioned by NE, where the applicant could choose whether to pursue the action, here arbitration would be to settle a discharge where there was no other recourse.

9.4 Mr Phillips advised that the rule could be amended as suggested by NE to include reference to the National Planning Practice Guidance, which provides details on when unreasonable behaviour can result in costs awards being made in planning appeals. The dDCO submitted for Deadline 6 has been amended accordingly.

9.5 **Any other DCO matters**

9.6 Mr Phillips advised, following on from discussion in ISH5, that should amendments be made to allow cable works in the Work No.4, these could be facilitated by amendments to the works plans and not the DCO, but a decision had not been made as yet on that.