Hornsea Project Three
Offshore Wind Farm

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Applicant's Response to IPs DL6 DCO Comments

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Front cover picture: Kite surfer near a UK offshore wind farm © Ørsted Hornsea Project Three (UK) Ltd., 2019.

In advance of the ExA publishing its Draft DCO on Tuesday 26th February 2019, the Applicant has reviewed Interested Parties representations made on the draft DCO (submitted at Deadline 6). The table below sets out Interested Party comment, Applicants Response and the suggested amendment to the Draft DCO.

Party	Provision	Interested Party Comment	Applicant's Response	Applicant's suggested Amendment to Draft DCO
MMO	DML Condition 2	"The MMO recommends that DML conditions including references to cable protection should be amended to explicitly confirm the maximum volume of the 10% cable protection, the maximum volume of the 25% cable protection replenishment, and that reference is made to a maximum of 10% cable protection which may only be deployed during the construction phase unless otherwise agreed by the MMO."	We do not propose making an amendment to dMLs. The volumes within the DCO include the 25% replenishment, to provide an overarching volume of rock for each of the dMLs. The Applicant will fully detail the maximum design scenarios for cable protection, in terms of total area and total volume, per designation within an updated outline Cable Specification and Installation Plan to be submitted at Deadline 7.	No amendments to DCO proposed.
	Schedule 13, para 1(2)	"This describes the process through which disputes are currently considered by both the MMO and licence holders and the MMO does not consider it necessary for the Schedule to explicitly refer to this internal escalation protocol."	Submissions made by IPs leading up to and during ISH3 (draft DCO) raised concerns that arbitration might become a solution of first, rather than last, resort and that text should be added to the Schedule to make it clear that parties should try to resolve disputes between them, before commencing arbitration. The text added at para 1(2) responds to that request by IPs.	No amendments to DCO proposed.
	Schedule 13, para 2(1)	"Paragraph 2(1) of the Schedule includes weekends in the measurement of timescales. The MMO advises however that public bodies including the MMO, Natural England, the Centre for Fisheries	We can switch to refer to "working days" but amend the wording so that the timescales are the same.	Amendment to be made to the DCO.

		and Aquaculture Science (Cefas) are not available to provide advice to applicants outside of their weekday operating hours. Set timescales in terms of the number of working days would be more appropriate here."		
	Schedule 13, para 4(1)	"Paragraph 4(1) sets out that 'no single pleading, witness statement or expert report will exceed 30 pages of A4'. In the MMO's experience, condition discharge documents are often necessarily complex to ensure that the evidence or data presented are clear, thoroughly examined and appropriately referenced. The MMO does not consider that such a restriction in document size would be appropriate given the complexity of post-consent issues requiring condition discharge on deemed marine licences."	The purpose of this is to keep the pleadings to a minimum, but the point is taken here.	Amendment to be made to the DCO.
	Schedule 13, para 6	"The MMO is, regardless of any proposed changes to its decision appeal processes, bound by the Marine and Coastal Access Act 2009 to administer the discharge of marine licence conditions. There would be no benefit to the MMO in calling for arbitration on a dispute raised on such a matter. Given that the entire benefit of calling for arbitration would be upon the licence holder in seeking a faster route through dispute resolution, the MMO considers that it would be appropriate for the Applicant to bear the costs of such a process."	It is the normal position for appeal procedures for parties to bear their own costs, save where conduct of a party has been unreasonable, in which case costs are often awarded against that party. The Applicant sees no good reason to take a different approach here. Also, there may well be circumstances where the MMO would wish to commence arbitration.	No amendments to DCO proposed.
	Schedule 13, para 7(2)	"In terms of confidentiality (Paragraph 7 of the Schedule), the MMO remains uncomfortable with 7(2) which states 'The Arbitrator may direct that the whole or part of a hearing is to be private and/or any documentation to be	This overlooks that paragraph 7(3) permits disclosure required under enactments. Also, Inspectors may direct hearings to be held in private under the PA08 and TCPA90, without offending the principle	No amendments to DCO proposed.

		confidential where it is necessary in order to protect commercially sensitive information.' This has the potential to be contrary to the requirement for open and transparent decision making in the regulatory process of Government bodies. The MMO would be content for commercially sensitive information to be redacted from documentation submitted to and subsequently published by the Arbitrator, subject to the requirements for commercial confidentiality in the Freedom of Information Act 2000. The assumption that hearings should be held in public with appropriate representation from relevant stakeholders is, however, considered to be an important principle of open government decision making."	of transparency.	
Natural England	Article 38 – DML appeal provisions	"Regulation 6 (1) of the 2011 Regulations provides that the Applicant would have 6 months in which to appeal. Given the Applicant's emphasis on speed in any dispute resolution mechanism, this should be amended to e.g. 4 weeks after refusal/failure to decide"	The Applicant notes these comments, but does not consider 4 weeks to be adequate. The Applicant would suggest an amendment to give a 3 month period.	Amendment to be made to the DCO.
	Article 38 – DML appeal provisions	"Regulation 18 of the 2011 Regulations deals with costs (incorporating other legislation as modified). The costs rules in Regulation 18 do not correspond with what has so far been agreed (see draft DCO submitted for deadline 4) between the parties for costs in the Applicant's proposed arbitration mechanism under Schedule 13 para 6 (and there is no reason why there should be any difference between the proposed mechanisms in that respect), and certainly don't correspond with what NE and the MMO are still	Currently the inspector would be able to award costs. For consistency the Applicant would agree that it may be sensible to make costs be borne by the parties as has been amended in the arbitration schedule.	Amendment to be made to the DCO.

		arguing for in relation to costs under the proposed arbitration mechanism (arguments which are also made in relation to costs under this proposed appeal mechanism)"		
	Schedule 11, Condition 18	"Condition 18 – (Construction monitoring) whether provision should be made for piling to stop if noise exceeds predictions Natural England continues to advocate for the inclusion of this provision."	This is included by the Applicant in the latest draft of the DCO (Submitted at deadline 6) as an alternative for the ExA's consideration.	No amendments to DCO proposed.
	Schedule 13, paragraph 6	• Comments mirror the MMO's on bearing own costs; • Suggest that an unreasonableness test should be introduced for payment of costs.	• See above; • The provision has been amended to reflect this.	No further action.
Trinity House	Schedule 11, Condition 8	"As detailed in Trinity House (TH's) letter dated 14 December 2018 we note that in Schedule 11 Article 8(6) the reference to back-up power supplies etc. for wind turbine generators appears to have been retained. Trinity House remains of the opinion that the purpose and scope of this provision appears to be unclear and would not appear to define the actual requirement – e.g. how long is 'sufficient back up power' and who will determine what is 'sufficient'? In addition, it does not appear clear as to what 'to aid navigation' means in the context of this Article."	The Applicant has agreed to remove condition 8(6).	Amendment to be made to the DCO.
	Schedule 11, Condition 13, and Schedule 12, Condition 14.	"In the interests of clarity as detailed in TH's letter dated 14 December 2018 Trinity House remains of the view, however, that it should be included, along with the MCA, in the DCO as a consultee under Article 13. Trinity House would highlight the inclusion of a similar provision in other DCOs including, for example, those relating to Hornsea One	The Applicant has no objections to this proposed amendment.	Amendment to be made to the DCO.

		Offshore Wind Farm Schedule 8 (Article 13) and the Hornsea Two Offshore Wind Farm in Schedule 8 Generation Assets (Article 8)."		
	Article 37 and Schedule 13 (Arbitration Rules)	"We would request that Article 37 and Schedule 13 of the draft DCO is therefore amended to make clear that Trinity House is not subject to the Arbitration provision".	The Applicant's view is as per its' previous submissions – the SoS has already determined in relation to two other DCOs that all parties and all matters should be subject to arbitration.	No amendments to DCO proposed.
Marine and Coastguard Agency	Schedule 11, Condition 17	"Pre-Construction requirements: The undertaker must conduct a swath bathymetric survey to IHO Order 1a of the site and its immediate environs extending to 500m outside of the authorised project area. The survey shall include all proposed cable routes. This should fulfil the requirements of MGN 543 and its supporting 'Hydrographic Guidelines for Offshore Developers', which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications. This must be submitted as soon as possible, and no later than [three months] prior to construction. The Report of survey must also be sent to the MMO."	The Applicant would wish to seek clarification from the MCA over this condition before including it in the DMLs. The Applicant supports the provision of data to the MCA but would like to discuss the extent of that survey to 500m outside of the authorised project area.	Applicant to discuss with MCA - No amendments to DCO proposed.
	Schedule 11, Condition 19	"Post-construction requirements: The undertaker must conduct a swath bathymetric survey to IHO Order 1a of the installed export cable route and provide the data and survey report(s) to the MCA and UKHO. The MMO should be notified once this has been done, with a copy of the Report of Survey also sent to the MMO, as per above guidelines."	The Applicant is content to provide notification to the MCA and UKHO.	Amendment to be made to the DCO.
North Norfolk District	Requirement 8	"During the Issue Specific Hearing, the local authorities met to discuss the suggested wording for	This is under discussion between the LPAs and the	Under discussion.

Council		Requirement 8. The agreed suggested wording was provided to the Applicant on 31 January 2019. It is: (1) As is (2) As is (3) The landscape plan must include details of— (a) surveys, assessments and method statements as guided by BS5837 and the Hedgerows Regulations; (b) the location, number, species, size and planting density of any proposed planting; (c) cultivation, importing of materials and other operations to ensure plant establishment; (d) existing trees and hedgerows to be retained with measures for their protection during the construction period; (e) implementation timetables for all landscaping works. (4) The landscape plan must be carried out as approved."	Applicant.	
	Requirement 23	"4.1. NNDC suggests the following wording, which was aired at the hearing. Amendments are shown in red: 23.—(1) Within three months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to and approved by the relevant planning authority. (2) The relevant planning authority must provide its decision on the plan within three months of its	Different wording has been added to the DCO with the same effect.	No amendments to DCO proposed.

		submission, of such plan unless otherwise agreed in writing by the relevant planning authority. (3) The decommissioning plan must be implemented as approved unless otherwise agreed in writing by the relevant planning authority."		