

From: [REDACTED]
To: [Immingham OCGT](#)
Cc: [REDACTED]
Subject: Written Response for Deadline 6a - Hornsea 2 Companies [S+W-LegalDiv.FID5120649]
Date: 23 January 2020 11:39:23
Attachments: [REDACTED]

Dear Sirs

Please find attached a written response for Deadline 6a on behalf of our client the Hornsea 2 Companies.

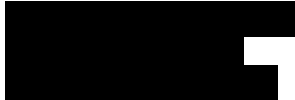
Please contact me if you require any further information.

I would be grateful if you could confirm receipt of this email.

Kind Regards

Kenna

Kenna Bisset
Trainee Solicitor, Environment and Planning
Shepherd and Wedderburn LLP



www.shepwedd.com

This email is strictly confidential, protected by copyright and may be legally privileged. It is intended solely for the addressee. If you are not the intended recipient you must not copy, disclose, distribute or take any action in reliance on it. If you have received this message in error, please delete it and notify us immediately. References to "Shepherd and Wedderburn" are to the international legal practice of Shepherd and Wedderburn LLP and/or its affiliated entities. Any emails by a named individual are sent for and on behalf of Shepherd and Wedderburn. Shepherd and Wedderburn does not accept any liability for any harm that may be caused to the recipient's system or data by this message or any attachment. For information about how we use your personal data please read our privacy policy at shepwedd.com/privacy-policy. Shepherd and Wedderburn's systems are subject to random monitoring.

Shepherd and Wedderburn LLP is a limited liability partnership incorporated in Scotland with number SO300895 with its registered office and principal place of business at 5th Floor, 1 Exchange Crescent, Conference Square, Edinburgh EH3 8UL. The term partner in relation to Shepherd and Wedderburn LLP is used to refer to a member of Shepherd and Wedderburn LLP. A list of the names of the members is available for inspection at the principal place of business. Shepherd and Wedderburn LLP is regulated by the Law Society of Scotland and is authorised and regulated by the Solicitors Regulation Authority (with number 447895). Shepherd and Wedderburn LLP (Singapore Branch) is a registered branch (with registration number T19FC0004K) and is licensed to operate as a Foreign Law Practice in Singapore. Shepherd and Wedderburn Europe is registered with the Law Society of Ireland (with number F9807). Details of the country or jurisdiction in which our lawyers are professionally qualified are set out at shepwedd.com/legal-notices.

1. Sections 127 and 138 of the Planning Act 2008

- 1.1 Optimus Wind Limited, Breesea Limited, Sonningmay Wind Limited and Soundmark Wind Limited (together the “**Hornsea 2 Companies**”) are the developers of the Hornsea Two Offshore Wind Farm (“**Hornsea Project Two**”) and have submitted a number of representations in respect of the application for the Immingham Open Cycle Gas Turbine Order (“**the Order**”). The objections to the grant of the Order and the reasons for those objections currently remain.
- 1.2 As requested by the Examining Authority the Hornsea 2 Companies have summarised their case in respect of Section 127 and Section 138 of the Planning Act 2008 (“**2008 Act**”) below. It should be noted however (again as further explained below) that discussions with VPI Immingham B Limited (“**the Applicant**”) have progressed well over the last week and we remain hopeful that a package of protections, being appropriate protective provisions and a crossing agreement, can be put in place which would allow objections by the Hornsea 2 Companies to be withdrawn before the close of the Examination.
- 1.3 Section 127 of the 2008 Act applies in respect of the compulsory acquisition powers sought by the Applicant as these compulsory acquisition powers are being sought over land in which the Hornsea 2 Companies hold an interest for the purposes of their statutory undertaking¹. These are plots 59, 60, 61, 62, 63, 64, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, and 92, as described in the Applicant’s Book of Reference submitted at Deadline 4, (“**the Relevant Land**”).
- 1.4 The Hornsea 2 Companies have acquired leases, and associated rights, within areas of the Relevant Land (“**Interests in Land**”) in order to lay, maintain etc. electricity supply cables and other associated apparatus (collectively “**the Apparatus**”). The Apparatus is expected to be laid over the coming months in the Relevant Land to connect the Hornsea Project Two offshore generating station with the onshore substation.
- 1.5 Without the protections of appropriate protective provisions and a crossing agreement, the Hornsea 2 Companies submit that the inclusion of compulsory acquisition powers under the Order in respect of the Relevant Land (and/or the Apparatus therein) could lead to serious

¹ The Hornsea 2 Companies are statutory undertakers for the purposes of the 2008 Act by virtue of having been granted a generation licence by the Office of Gas and Electricity Markets.

detriment to Hornsea Project Two and to their and any future Offshore Transmission Owner's statutory undertaking and therefore in terms of Section 127 such powers should not be included in any grant.

- 1.6 Section 138 of the 2008 Act is engaged by Article 29 of the draft Order. This Article would enable the Applicant to extinguish or relocate apparatus of statutory undertakings. As described in paragraph 1.4 above, the Hornsea 2 Companies hold Interests in Land over the Relevant Land and will install Apparatus for the purpose of their Statutory Undertaking. The Hornsea 2 Companies submit it would be of serious detriment to their undertaking, and their own Nationally Significant Infrastructure Project, if the Applicant is granted the unfettered right to extinguish rights and remove apparatus in the terms sought and does not consider that it has been demonstrated that such powers are necessary in respect of the Relevant Land and/or the Apparatus.
- 1.7 The Hornsea 2 Companies and the Applicant have had positive detailed discussions on the terms of protective provisions (to be included in the Order) and a proposed crossing agreement. The form of protective provisions and agreement are close to being finalised. If the remaining issues can be agreed and thereafter (i) the protective provisions included in the Order; and (ii) the crossing agreement entered into by the parties, then the Hornsea 2 Companies would be in a position to withdraw their objection.