

Hornsea Project Four

Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1 Part 1: DCO and DML

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1 Introduction

- 1.1.1.1 Issue Specific Hearing 1 (ISH1) on the draft Development Consent order ("DCO") for the Hornsea Project Four Offshore Wind Farm took place on 12 April 2022 at 10am and was held virtually, with attendees attending via Microsoft Teams.
- 1.1.1.2 The ISH1 broadly followed the agenda published by the Examining Authority (the ExA) on 23 March 2022 (The Agenda).
 - The ExA, the Applicant, and the stakeholders discussed the Agenda items which broadly covered the areas outlined below.
 - Articles and Schedules of the draft DCO (excluding Schedules 1, 9 and 15);
 - Schedules 1,11 and 12 of the draft DCO Requirements and Conditions;
 - Schedule 9 of the draft DCO All protective provisions other than those suggested by the Applicant and BP Exploration Operating Company Limited (BP) as set out in [REP1-057];
 - Schedule 15 of the draft DCO Documents to be certified;
 - Securing of HRA compensation measures that have been advanced on a without prejudice basis;
 - Consents, licences and other agreements including any Transboundary matters;
 and
 - Protective Provisions suggested by the Applicant and BP [REP1-057] with regard to the overlap zone.



Table 1: Summary of the Issue Specific Hearing

ltem	ExA Question/Context for discussion	Applicant's Response
Agenda item	1 - Welcome, introductions, arrangements for the hearing	
1	The Examining Authority ("ExA") opened the hearing, introduced themselves and invited those parties present to introduce themselves.	The following parties introduced themselves on behalf of the Applicant: Mr Gareth Phillips, Partner, Pinsent Masons LLP (Lead Advocate)
	present to introduce themsetves.	Ms Claire Brodrick, Senior Associate, Pinsent Masons LLP
		Mr Jamie Baldwin, Development Project Director for Hornsea Project Four, Ørsted
		Ms Hannah Towner-Roethe, Application Lead for Hornsea Project Four, Ørsted
		Dr Julian Carolan, Consent Project Manager for Hornsea Project Four, Ørsted
	2 – Articles and Schedules of the draft DCO (excluding Schedules 2	1, 9 and 15)
2	Re-ordering of agenda to discuss protective provisions	Mr Phillips on behalf of the Applicant agreed to discuss the PPs for bp in the DCO ISH hearing as
	("PPs") for the benefit of BP Exploration Operating	suggested by the ExA and confirmed that certain technical responses may need to follow in writing
	Company ("BP") later in the agenda	due to lack of availability of technical specialists at relatively short notice.
	The ExA confirmed in its view that there was benefit in	Ms Howard on behalf of BP thanks Mr Phillips and confirmed that BP would be happy to discuss
	discussing the reasons PPs were needed at the DCO	agenda item 8 in the afternoon with technical responses to follow in writing where necessary.
	hearing and there was more time in this hearing than	
	ISH3 (in respect of which the discussion was originally	
	scheduled).	
	The ExA acknowledged representations from both	
	parties that certain responses may need to be deferred	
	to a later date in order to consult with technical	
	representatives. The ExA invited comments from both	
•	parties on the approach.	
2	Brief overview of the dDCO	Mr Phillips on behalf of the Applicant gave an overview as follows:
	The ExA requested that the Applicant walk the	- Part 1 covers citation and interpretation;
	attendees through the DCO and its main provisions	- Part 2 covers principal powers sought by the order;
	briefly.	- Articles 3 and 4 cover construction and maintenance;
		- Article 5 covers the benefit of the order;
		- Article 6 and 7 deals with the application and modification of legislation;
		- Part 3 covers works that may be required to public highways and streets;



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		 Part 4 includes the supplemental powers; Part 5 is important and includes the compulsory acquisition powers sought by the Applicant including temporary use powers; Part 6 authorises operation and secures the deemed marine licences in Schedules 11 and 12; Part 7 is a 'sweep up' to an extent and covers miscellaneous provisions such as the ability to work around trees which are subject to preservation orders, and application of landlord and tenant law and other such matters; Article 38 secures the certification of plans and documents in Schedule 15; Article 45 covers funding and security for compulsory acquisition powers; There is a boiler plate provision on the service of notifications; Article 48 includes an article on modification of section 106 agreements; and Article 49 secures the Habitats Regulations Assessment ("HRA") compensation provisions.
2	The ExA asked if there were any necessary updates to be made to the Hornsea Four DCO as a result of the grant of the DCOs for East Anglia ONE North Offshore Windfarm ("EA1N") and East Anglia TWO Offshore Windfarm ("EA2")	Mr Phillips on behalf of the Applicant noted that the review had been undertaken and there are no material changes to the DCO required. The Applicant can confirm that it has updated the draft DCO since application (at deadlines 1, 2 and 3) as evidenced in the DCO Schedule of Change (C1.1.1) to reflect emerging best practice from recent offshore wind farm decisions. This includes splitting the schedule of certified documents in schedule 15 to list the Environmental Statement ("ES") documents separately, adding a condition to the DMLs to provide a close out report to the MMO following completion of construction (condition 24 of Part 2 of Schedules 11 and 12 of the draft DCO) and amending the HRA compensation drafting in Schedule 16. The Applicant has also sought to address all stakeholder and Examining Authority feedback to date, and where appropriate updated the DCO to reflect that feedback.
2	Article 2 and the description of authorised development The ExA noted that article 2 contains a definition for authorised development and for authorised project. The ExA asked the Applicant to explain why two definitions are needed and what the difference is between the two.	Mr Phillips for the Applicant confirmed that "authorised project" included ancillary works and was therefore a broader definition, which had an effect on drafting later on in the DCO.
2	Definition of "bridge link" The ExA noted that the DCO now included a definition of "bridge link". Whilst it is clear in other documentation what is meant by "bridge link", the ExA thought it could	Mr Mcnamara on behalf of Trinity House stated that he believed the definition was sufficiently clear. Mr Phillips on behalf of the Applicant noted that the ExA's concern could be dealt with by either defining "permanent offshore installation asset" (which is within the definition of "bridge link") or by



	also be interpreted in the DCO as meaning a link to a wind turbine. The EXA invited comments from other parties on whether they thought the definition needed amendments.	refining the definition of "bridge link" and confirmed that this would be dealt with by deadline 3. The definition of bridge link has subsequently been amended in the draft DCO.
2	Commitments Register The ExA asked whether the definition of Commitments Register should refer to article 38.	Mr Phillips for the Applicant confirmed and stated that this would be included in the DCO submitted at deadline 3. The definition of commitments register has subsequently been amended in the draft DCO.
2	Definition of "MMO" The ExA noted that the definition of "MMO" was different in article 2 than in the deemed marine licences and asked if the definitions needed to be amended for consistency.	Mr Phillips confirmed that the Applicant would review the definitions and amend as required for deadline 3. The definition of Marine Management Organisation (MMO) has subsequently been amended in the draft DCO.
2	NATS The ExA noted that the term "NATS" is not defined in article 2 and asked if it should be given that it is used in article 28.	Mr Phillips for the Applicant noted that the only place "NATS" was used was in article 28 and as such a definition in that article was sufficient and a definition in article 2 was not required. The Applicant can confirm the term "NATS" is only used in the DCO and DMLs in article 28.
2	Onshore site preparation works The ExA noted that the definition of "onshore site preparation works" in article 2 included an extensive list but this excluded demolition works and asked why. The ExA also noted that the definition only included intrusive environmental surveys (as opposed to wider environmental surveys) and that in the recently issued East Anglia One North Offshore Wind Farm Order 2022, the word "intrusive" was defined. The ExA asked if it should also be defined in the Hornsea Four Offshore Wind Farm Order. The ExA asked why only intrusive surveys should be included in this definition. The ExA queried why certain other activities were excluded from the definition.	Mr Phillips for the Applicant confirmed that the Applicant had not identified any structures requiring demolition; The Applicant has now included a definition of "intrusive environmental surveys" in the draft DCO submitted at deadline 3; Mr Phillips on behalf of the Applicant noted that this was because non-intrusive surveys do not normally constitute development and would not constitute a "material operation" for the purposes of the definition of "commence"; The Applicant has reviewed the definition and included ecological mitigation in the draft DCO submitted at deadline 3.
2	The definition of "section 106 agreements"	Ms Brodrick for the Applicant confirmed that the section 106 agreements were not currently submitted into examination but advised that they could be. Ms Brodrick confirmed that these three



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	The ExA noted that this definition referred to three	agreements had been identified as part of the title review process and related to existing
	agreements but that the ExA had not seen copies of	developments such as an onshore wind farm in close proximity to the onshore cable route. The
	them. The ExA asked if these three agreements should	extent of the obligations in the section 106 agreements are entirely related to the onshore wind
	be submitted into examination as article 48 seeks to	farm and not the Hornsea Four project, but there are no exemptions in the agreements for statutory
	ensure the Applicant is not bound by them.	undertakers, meaning Hornsea Four would be automatically bound by their terms by acquiring
		certain land interests. Ms Brodrick reiterated that the Applicant was just seeking to ensure that the
		Applicant was not bound by the obligations in these s106 agreements as the obligations were not
		relevant to Hornsea Four and the Applicant did not have the powers to comply with the obligations
		in any event.
		Copies of the section 106 agreements have been appended to this document (Appendix A).
2	Article 5	Mr Phillips on behalf of the Applicant noted that the form of transfer of benefit provisions included
	The ExA raised the request by the MMO that all	in the DCO had featured in many other made DCOs and are established as accepted by the
	references to the MMO and the DMLs should be	Secretary of State. Mr Phillips suggested that if the MMO would like to request a change to this
	removed from article 5 as the transfer is already	drafting, he requested that justification be provided by the MMO.
	covered by the Marine and Coastal Access Act 2009	
	("MCAA 2009") and asked the Applicant to comment.	
2	Article 8	Mr Phillips on behalf of the Applicant clarified that in DCO.1.10, the ExA had suggested several
	The EXA asked ERYC to clarify its response to First	additions to the current drafting. The Applicant has included two such proposed additions (at sub-
	Written Question ("FWQ") DCO.1.10 as it had stated it	paragraphs (a) and (c)) but did not believe the others were necessary.
	has no objection to the expanded list of street works,	
	but the ExA believed the list had not been expanded.	
2	Article 10	Mr Phillips for the Applicant confirmed that this point is accepted and that the Applicant would
	The ExA noted that in its response to FWQ DCO.1.12,	update the DCO for deadline 3. Articles 10(7), 12(2), 15(9) and 17(6) of the draft DCO have
	ERYC had suggested that a 56-day timeframe would	subsequently been updated to refer to 56 days.
	be more appropriate.	
Agenda item 3 –	- Schedules 1, 11 and 12 of the draft DCO – Requirements and	conditions
3	Schedule 1 paragraph 1	The ExA asked whether the wording of work no. 2 needed to be amended to refer to HVDC in sub-
		paragraphs (a) and (b).
		Mr Phillips confirmed the Applicant would review the wording and clarify at deadline 3. Having
		reviewed the drafting, the Applicant can confirm the drafting of Work No. 2 is correct and that it
		would be incorrect to refer to HVDC in sub-paragraphs (a) and (b) as the offshore transformer
		substations are relevant to both HVDC and HVAC technology.
		Depending on the project capacity and the chosen transmission voltages, the HVAC or HVDC
		offshore substations will step up ("transform") the voltage for transmission via the export
		cable. From the offshore substations (either HVAC or HVDC), the power is transmitted via export



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	cable to the onshore substation (via the HVAC booster station in the case of a HVAC system), from where it will connect to the National Grid substation at 400kV. On that basis, the Applicant considers the wording of Work No. 2 to be sufficiently precise and no amendments are necessary.	
Work No. 10 The ExA referred to the paragraph after Work No. 10 in Schedule 1 Part 1 and the phrase "such works as may be expedient or necessary". The ExA asked if this was a closed or open list.	Mr Phillips on behalf of the Applicant confirmed this was an open list and noted that in article 2(5), the DCO explains how "include" should be interpreted. To the extent that the list is open however, Mr Phillips confirmed that the drafting ensures it is limited to what has been assessed in the ES.	
Requirement 2 of Schedule 1 and Condition 1 of Schedule 11 and 12 The ExA noted that in its response to FWQ NAR.1.9, the Applicant had provided detail on why referred to highest astronomical tide ("HAT") rather than lowest astronomical tide ("LAT") in its measurements. The EXA noted however that many other wind farms refer to HAT rather than LAT and asked the Applicant to expand further. The ExA asked what the benefit is of using LAT rather than HAT.	Mr Phillips on behalf of the Applicant stated that LAT was used in the Applicant's projects across its portfolio. The Applicant's preference is to continue to use LAT for measurements, and this is measurement widely understood in the industry. Mr Phillips confirmed there was no benefit or disbenefit to using either measurement, and that so long as the dimensions were correctly stated, they would be understood with the use of either term. The Applicant notes that the approach to referring to LAT in the Hornsea Four DCO is the same as the recently granted Hornsea Three Offshore Wind Farm Order 2020 (and prior to that, the Hornsea Two Offshore Wind Farm Order 2016). The Applicant is not aware of any substantive concerns from stakeholders with regards to the references to LAT and has therefore opted to maintain the references to LAT to ensure consistency with its portfolio operation.	
Requirements for approvals to be in writing The ExA noted that in several requirements or conditions, the Applicant had stated in the DCO that approval must be provided in writing. The ExA requested that the Applicant either delete requirement 29 and leave in other references to approvals being in writing, or to keep requirement 29 and delete references elsewhere requiring approvals to be provided in writing.	Mr Phillips on behalf of the Applicant agreed with the ExA and confirmed that the DCO would be updated for deadline 3. The Applicant has maintained requirement 29 and updated Part 3 of Schedule 1 of the draft DCO to delete reference to approvals "in writing" in individual requirements.	
Requirement 7 The ExA queried whether requirement 7 should list the onshore design parameters	Mr Phillips on behalf of the Applicant confirmed this was not necessary as the outline design plan ("ODP") is a secured document and certified for the purposes of the DCO. The ODP contains a list of onshore design parameters and therefore if the Applicant were to propose a design to ERYC, ERYC	
	Work No. 10 The ExA referred to the paragraph after Work No. 10 in Schedule 1 Part 1 and the phrase "such works as may be expedient or necessary". The ExA asked if this was a closed or open list. Requirement 2 of Schedule 1 and Condition 1 of Schedule 11 and 12 The ExA noted that in its response to FWQ NAR.1.9, the Applicant had provided detail on why referred to highest astronomical tide ("HAT") rather than lowest astronomical tide ("LAT") in its measurements. The EXA noted however that many other wind farms refer to HAT rather than LAT and asked the Applicant to expand further. The ExA asked what the benefit is of using LAT rather than HAT. Requirements for approvals to be in writing The ExA noted that in several requirements or conditions, the Applicant had stated in the DCO that approval must be provided in writing. The ExA requested that the Applicant either delete requirement 29 and leave in other references to approvals being in writing, or to keep requirement 29 and delete references elsewhere requiring approvals to be provided in writing. Requirement 7 The ExA queried whether requirement 7 should list the	



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		could review the ODP to check what is proposed is in line with the plan. Mr Phillips confirmed that the parameters in the ODP are taken from the ES. Ms Downs on behalf of ERYC confirmed that ERYC believe the ODP is sufficiently clear to allow discharge of the requirement whilst still acknowledging the Applicant's need for flexibility. The Applicant considers the drafting to be sufficiently precise and enforceable for the purposes of the DCO. The Applicant notes that similar wording was approved by the Secretary of State in the Hornsea Three Offshore Wind Farm Order 2020.
3	References to Historic England The ExA noted that throughout the DCO reference had been made to the historic Buildings and Monuments Commission for England. The ExA believed it was more user-friendly to use the name "Historic England".	Mr Phillips on behalf of the Applicant confirmed that could be accepted and that the DCO would be amended for deadline 3. The Applicant has subsequently updated the references to Historic England in the draft DCO.
3	Requirement 9 The ExA noted that requirement 9 only required maintenance of landscaping for a period of five years after planting. The ExA asked whether it would be more appropriate to carve out certain assets for which longer maintenance was required.	
3	Requirement 11 The ExA asked ERYC whether it believed that the list in requirement 11(2) should set include lighting, signing and safety measures.	Ms Downs on behalf of ERYC confirmed that would be preferable.
3	Requirement 13 The ExA queried why "operation" had been used in the first line of requirement 13(2) and queried whether this would require the lead local flood authority to approve details of connection works once the infrastructure was in the ground The EXA also queried whether requirement 13(3) should be amended to "constructed, operated and maintained".	



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3	Requirement 15 The ExA asked if "include" should be inserted at the beginning of requirement 15(2)(b). Requirement 16 The ExA asked the Applicant to explain the difference between requirement 16(2) and 16(3).	Mr Phillips on behalf of the Applicant confirmed that it should and requirement 15(2)(b) of Part 3 of Schedule 1 of the draft DCO has subsequently been updated accordingly. Mr Phillips for the Applicant confirmed the Applicant_would review and get back to the ExA with a written response or an amendment to the DCO. The Applicant confirms that it has amended requirement 16 of Part 3 of Schedule 1 of the draft DCO to clarify that paragraph 16(3) obliges the Applicant to comply with the written scheme of archaeological investigation in respect of the connection works approved pursuant to requirement 16(1) whereas requirement 16(2) requires the Applicant to comply with a specific written scheme of archaeological investigation in respect of the onshore site preparation works.
3	Requirement 17 The ExA noted that the outline code of construction practice included appendices but also refers to plans to be submitted for which there are no outline plans. The ExA asked if outline plans should be submitted and if not, how can the ExA be sure the final plans will be appropriate?	Mr Phillips for the Applicant advised that the Applicant would review requirement 17 and provide a written response at deadline 3. Following the hearing, the Applicant has considered this request further. The Applicant considers that the outline code of construction practice already includes sufficient details of the measures that will need to be included in these plans to enable the ExA to be satisfied that the final plans will be appropriate: Emergency Response and Pollution Control Plan – detail is provided in Section 5.5 Outline CoCP, however, the Applicant considers that it is appropriate for the particular measures to be specified once the principal contractor has been appointed post DCO grant. Communications Plan – the Applicant considers that it is appropriate for the particular communication methods to be identified nearer to the commencement of construction. Crossing Method Statements – detail is provided in Section 5.8.2 of the Outline CoCP; however, due to the number of diverse crossings, it is not considered appropriate or proportionate to include outline method statements for all crossing types at this stage in the process. Construction Lighting Plan – detail is provided in Section 5.4 of the Outline CoCP that sets out the main principles. This is considered sufficient at this time, with specific details provided upon appointment of a principal contractor. The above approach has been agreed with ERYC and documented in the statement of common ground between the Applicant and ERYC (F3.1).



3	Requirement 21 The ExA noted that work no. 7 cannot commence operations until the noise management plan has been approved. The ExA queried whether the word "operations" was correct here, since the noise control measures would need to be in place before construction.	Ms Brodrick on behalf of the Applicant confirmed that requirement 7(1)(i) requires the Applicant to submit measures to control noise as part of pre-commencement of construction requirements for Work Nos. 7(a) and 7(b) so noise mitigation would be put in place before construction as part of that requirement. She clarified that requirement 21 predominantly relates to how noise will be monitored on an ongoing basis during operation, hence the reference to commencing operations.
3	Requirement 24 The ExA raised a comment made by the Environment Agency ("EA") and the request to be included as a consultee on any decommissioning plan under requirement 24.	Mr Phillips on behalf of the Applicant stated that the Applicant did not believe this was necessary since the EA would be consulted in any event by ERYC as the local planning authority when approving the decommissioning plan. Mr Phillips on behalf of the Applicant reiterated that he did not believe this was necessary but that the Applicant would consider whether to update requirement 24 further. Having further considered the matter the Applicant does not consider an amendment to requirement 24 is necessary and no amendment to the draft DCO has been proposed.
3	Schedule 1, Part 4, paragraph 2(1) The ExA asked ERYC whether it was happy with the eight-week period for decisions on applications made under requirements and whether it preferred the time to run from when the application was received or validated.	Ms Downs on behalf of ERYC confirmed that the eight-week period was acceptable but that ERYC would prefer the time to run from when the application was validated. Mr Phillips on behalf of the Applicant noted that the issue with time running from validation of the application was that the Applicant did not have much control over when the validation would take place, which created uncertainty in the Applicant's project timescales. Mr Phillips offered to take the point away for discussion. Further discussions have taken place with ERYC following the hearing and the draft DCO submitted at deadline 3 has been updated to make it clear that any applications must be validated within 5 working days.
3	Gap between Hornsea Four and Hornsea Two array areas The ExA queried whether Hornsea Four works would take place in the gap between the array areas The ExA queried whether jack-up vessels and maintenance vessels would be stationed within the gap	Mr Phillips on behalf of the Applicant noted that the development powers the Applicant is seeking in the DCO are limited to the Order limits, so no development can take place outside of those limits. The vessels associated with maintenance will however be permitted to navigate through the gap between arrays, just as other vessels will be. Mr Phillips on behalf of the Applicant confirmed again that the Applicant is unable to carry out development outside the Order limits but that the Applicant would confirm the position in respect of jack-up vessels and maintenance vessels at deadline 3.
		Having reviewed the matter further, the Applicant can confirm that when referring to the gap as 1.9NM (the straight line distance between the Hornsea Project Two and Hornsea Four Order Limits)



	there will be no jack-up vessels (or other vessels) and/or ancillary structures engaged in construction and/or maintenance of Hornsea Four located within the gap.
	However, the Applicant's safety case, considered the gap as the straight line distance between the centre point of Hornsea Four and the Hornsea Project Two structures of 2.2NM. The 0.3NM difference between the Order Limits and the wind turbine generator (WTG) structures is to allow for Hornsea Four (and Hornsea Project Two) structure set-back from the Order Limits and to allow all associated construction and maintenance activities to occur within the respective Order Limits. The safety case found the risk of ancillary structures and vessels within the gap to be acceptable from a safety perspective.
	The Applicant also refers the ExA to the MCA's Deadline 2 submission (Responses to Examining Authority's First Written Questions (ExQ1) (REP2-078) where the MCA stated: "Ancillary equipment has the potential to reduce the navigable gap, however MCA would expect them to be positioned so as not to reduce the gap as far as practicably possible. Whilst any ancillary equipment during construction and major maintenance will attract a safety zone, vessels may still enter a safety zone if they are avoiding a collision or when in distress, therefore in such an event there is minimal impact on the reduced available sea room for manoeuvring"
	The Applicant can confirm that the reduction in navigable gap as a result of ancillary structures and/or vessels, as referred to by the MCA, relates to the 0.3NM distance between 2.2 and 1.9NM. There is no further constraint to the gap (or available sea room beyond 1.9NM) associated with ancillary structures or vessels associated with all stages of the Hornsea Four development.
Schedule 11 and 12, paragraph 1 The ExA noted that there is no definition of Order limits in paragraph 1 of Schedules 11 and 12 and queried why.	Mr Phillips on behalf of the Applicant confirmed this was an oversight and that a definition would be added for deadline 3. The Applicant has updated Schedule 11 and Schedule 12 of the draft DCO accordingly.
Volumes of drill arisings The ExA raised the MMO's comment on drill arisings and including the volumes in the DCO and noted that the Applicant had prepared a note at deadline 1 to confirm this wasn't done in the Hornsea Three Offshore Wind Farm Order 2020. The ExA asked if the volumes of drill arisings were included in the EAN1, EA2, Norfolk Boreas	Mr Phillips on behalf of the Applicant noted that the Applicant would confirm in writing how recent orders dealt with this issue but reiterated that as stated in the responses to FWQs and relevant representations, the volumes of drill arisings are provided in the pro-rata annex, which is a certified document and secured via the DCO requirements and marine licence conditions. The Applicant notes that Schedule 11 condition 1(9) states: "The wind turbine generators comprised in the authorised project must be constructed in accordance with the parameters set out in the pro-rata annex." Schedule 12 condition 1(13) states:
	The ExA noted that there is no definition of Order limits in paragraph 1 of Schedules 11 and 12 and queried why. Volumes of drill arisings The ExA raised the MMO's comment on drill arisings and including the volumes in the DCO and noted that the Applicant had prepared a note at deadline 1 to confirm this wasn't done in the Hornsea Three Offshore Wind Farm Order 2020. The ExA asked if the volumes of drill



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		"The offshore electrical installations comprised in the authorised project must be constructed in accordance with the parameters set out in the pro-rata annex." Table 1 of the pro-rata annex provides the total "drilling spoil" and the drilling spoil per position (turbine foundation and substation foundation (where relevant)). The Applicant therefore considers that the licensed volume of drill arisings is sufficiently precise and secured. The Applicant has checked other recently-made DCOs for offshore wind farms and confirms that the East Anglia ONE North Offshore Wind Farm Order 2022 and the East Anglia TWO Offshore Wind Farm Order 2022 do not specify the volumes of drill arisings within the DCOs. The Norfolk Vanguard Offshore Wind Farm Order 2022 and the Norfolk Boreas Offshore Wind Farm Order 2021 do include specific volumes in Schedule 1 Part 1.
3	Schedules 11 and 12, Part 1, paragraph 9 The ExA outlined that the MMO object to the use of the term "immaterial changes" and asked for the Applicant's views.	Mr Phillips on behalf of the Applicant confirmed that the Applicant did not propose to make any amendment to paragraph 9 of Part 1 of the deemed marine licences. He noted that the drafting has been included in recent offshore wind farm orders and it has therefore been determined that the drafting is to the satisfaction of the Secretary of State. He invited the MMO to make specific submissions on any concerns with the paragraph. The Applicant will consider any specific concerns or suggestions the MMO has on the drafting.
3	Outline and Maintenance Plan ("O&M Plan") The ExA noted that the MMO believe an O&M Plan should be submitted to the examination.	Mr Phillips confirmed on behalf of the Applicant that an O&M Plan was submitted at deadline 2 and that the DCO would be updated for deadline 3 to secure the plan and it would also be listed as a certified document. The Applicant has subsequently updated the draft DCO accordingly.
3	Definition of "maintenance works" The ExA also noted that the MMO considered "maintenance works" should be defined but the ExA notedthis was done by condition 4(3) of part 2 of Schedules 11 and 12.	Mr Phillips on behalf of the Applicant agreed with the ExA.
3	Condition 7 The ExA asked if "construction works" needed to be defined of the purpose of precision and enforceability.	Mr Phillips for the Applicant stated that he believed the term was sufficiently clear and matched drafting in previous orders made. Mr Phillips also highlighted that the Applicant had accepted the vast majority of the MMO's comments but that some of the comments requested the Applicant to depart from drafting included and accepted in recently made orders. Where this was the case, Mr Phillips requested that the MMO provide specific justification for their request so that the Applicant could consider why it should depart from wording approved by the Secretary of State.



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3	Condition 12 The ExA noted that the MMO believed the force	Mr Phillips on behalf of the Applicant clarified that this provision was not duplicating the provisions of the MCAA 2009, rather it was obliging the Applicant to notify the MMO if emergency unauthorised
	majeure provisions in condition 12 were already covered by the MCAA 2009 and asked why this was needed in the DMLs.	deposits were made in the case of an emergency.
3	Condition 13 The ExA referred to a point raised by Historic England that the construction method statement should refer to archaeological evaluation to avoid in situ archaeological sites. The ExA invited comments from the Applicant.	Mr Phillips on behalf of the Applicant noted that the amendment was not necessary as it is already covered by other conditions, but that the Applicant would respond in writing at deadline 3 to confirm the details of those conditions. The Applicant's position is that there is sufficient protection within the DML conditions for archaeological features and there is no requirement for additional regulation. Condition 13(1)(c) contains provisions for marine archaeology by requiring that the construction method statement (CMS) has "regard to any mitigation scheme pursuant to sub-paragraph 13(1)(f)."
		Condition 13(1)(f) states that no licenced activities may commence until details for the relevant stage of pre-construction monitoring surveys, construction monitoring, and post-construction monitoring and related reporting in accordance with conditions 17, 18 and 19 have been approved by the MMO. Condition 17 relates to pre-construction monitoring and surveys.
		Condition 17(1) requires a monitoring plan in accordance with the outline marine monitoring plan (which contains a marine archaeology section) for approval by the MMO and the relevant statutory body (which would include HE).
		Condition 17(2) the identification of archaeological exclusion zones (AEZs) and commitment to post consent monitoring of any AEZs. There is also further protection in condition 13(2) and 13(3) which secure a marine written scheme
		of archaeological investigation which must be approved prior to commencement of the licensed activities and works have to be carried out in accordance with the approved plan.
3	Condition 13(8) The ExA asked the Applicant to expand on the purpose of condition 13(8).	Mr Phillips confirmed on behalf of the Applicant that sub-paragraph 9 relates to a request made by the MMO to understand how the undertakers involved in the case of a transfer of benefit would liaise with each other and collaborate.



	The Applicant can confirm the purpose of condition 13 paragraphs (7) – (9) is to ensure collaboration between undertakers in the event of any transfer of benefit of the DMLs and was included in response to the MMO's RR-020-2.1.1 which was:
	"The dDCO contains 2 DMLs consisting of one for the generation assets (Schedule 11) and one for the transmission assets (Schedule 12). Splitting the assets into two separate DMLs ensures smooth transitions during the transfer of benefit. If a transfer of benefit were to happen, it is unclear what mechanisms would be in place to ensure two different asset holders working in the same area would collaborate together, especially with regard to incombination effects. This is considered a potential risk to the project by the MMO. The MMO is therefore considering requesting the inclusion of a collaboration condition to go within the DML. The MMO will confirm this within its next written response."
	The text is based on similar provisions included in the Hornsea Two Offshore Wind Farm Order 2016.
Condition 14 The ExA noted that the heading for condition 14 was missing. The ExA also noted that the documents listed under condition 14(1)(a)-(d) already exist as certified documents, meaning the condition did not make sense as drafted. The ExA asked the Applicant to comment on the MMO's concerns around the current timeframe for approval of documents under condition 14.	At the hearing, Mr Phillips on behalf of the Applicant confirmed that the heading would be inserted. However, upon review the Applicant confirms that condition 14 is a continuation of the topic of preconstruction plans and documentation, which is the heading above condition 13. It is not therefore necessary to repeat this heading for condition 14. This is in line with the drafting approach taken in the East Anglia ONE North Offshore Wind Farm Order 2022, the East Anglia TWO Offshore Wind Farm Order 2022 and the Hornsea Three Offshore Wind Farm Order 2020, as well as the drafting in Part 3 of Schedule 1 of the draft DCO. Mr Phillips confirmed that the word "outline" will be removed from the titles of the documents in subparagraphs (a) to (d) of condition 14 of Part 2 of Schedules 11 and 12 in the draft DCO submitted at deadline 3. The Applicant has subsequently updated the draft DCO accordingly. Mr Phillips also confirmed that for the documents listed at condition 14(1)(a)-(e), the Applicant has agreed to submit these six months prior to commencement but for other documents, the Applicant requires a four-month timeframe for development programming (as reflected in the current drafting).
Definitions in Schedules 11 and 12 The ExA raised the MMO's concern that the definitions in Schedule 12 do not mirror the definitions in Schedule 11.	Mr Phillips for the Applicant stated that not all the definitions in Schedule 11 are relevant to Schedule 12 as some relate only to the generating assets. However, the Applicant will review the MMO's comments on typographical errors and suggested inclusions and will respond to those at deadline 3.
	The ExA noted that the heading for condition 14 was missing. The ExA also noted that the documents listed under condition 14(1)(a)-(d) already exist as certified documents, meaning the condition did not make sense as drafted. The ExA asked the Applicant to comment on the MMO's concerns around the current timeframe for approval of documents under condition 14. Definitions in Schedules 11 and 12 The ExA raised the MMO's concern that the definitions in Schedule 12 do not mirror the definitions in Schedule



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3	Condition 13(1)(k) The ExA asked the Applicant to clarify why the ornithological monitoring plan was secured by condition 13(1)(k) in Schedule 11 but there was no corresponding condition in Schedule 12.	Mr Phillips for the Applicant advised that the ornithological monitoring plan related to the generation assets (i.e. the wind turbines), hence it was relevant to Schedule 11 but not to Schedule 12 which licenses the transmission works.
3	Requirement suggested by Historic England to ensure the safety of the Sanctuary Stone The ExA highlighted that Historic England had suggested the inclusion of a requirement to ensure the safety of the Sanctuary Stone. The ExA invited the Applicant and ERYC to comment on the suggested requirement.	Ms Brodrick for the Applicant confirmed the Applicant's position is that adequate protection is already provided in the outline written scheme of investigation for onshore archaeology, which is a certified document and secured via Requirement 16. Requirement 16 requires the WSI to be approved by the local planning authority in consultation with Historic England prior to commencement of any relevant stage of the connection works.
3	Suggested amendments from Trinity House Mr Mcnamara on behalf of Trinity House highlighted that Trinity House had made several suggested amendments to the DCO and wondered if those would be discussed.	Mr Phillips on behalf of the Applicant confirmed that the Applicant had reviewed the proposed amendments suggested by Trinity House and that that they would feature in the next version of the DCO to be submitted at deadline 3 (G3.3)
3	Suggested amendments from the MCA Mr Salter on behalf of the MCA also noted that the MCA had made several suggested amendments to the DCO and wondered if they were accepted.	Mr Phillips on behalf of the Applicant confirmed that the majority of the amendments suggested by the MCA would be accepted by the Applicant but that there were one or two which may need clarification between the two parties (G3.3).
Agenda item 4: Sci	nedule 9 of the draft DCO	
4	Protective provisions – update The ExA asked the Applicant to provide a general update on the status of negotiations on protective	Ms Brodrick of behalf of the Applicant provided the following update: Northern Powergrid
	provisions ("PPs").	Ms Brodrick confirmed that the Applicant had almost reached agreement with Northern Powergrid for a side agreement and bespoke PPs which will be added to Schedule 9. The aim is to agree those by deadline 4.
		Northern Gas Networks Ms Brodrick confirmed that Northern Gas Networks have requested a separate crossing agreement instead of bespoke PPs in the DCO and this is being reviewed by the parties. Ms Brodrick added that it was hoped agreement would be reached prior to the end of the Examination.
		National Grid



The PPs included in Schedule 9 for the benefit of National Grid (applying to both their gas and electricity undertakings) already contain their preferred wording. The only outstanding issue between the parties relates to a separate side agreement covering matters such as insurance and indemnities. In addition to that there are heads of terms for a property agreement relating to rights for the cable at Creyke Beck substation. Once the agreement is in place, provisions relating to compulsory acquisition powers will be agreed. Monthly meetings are taking place between the Applicant and National Grid in which the parties also discuss the interaction between SEGL2 and Hornsea Four and whether any additional provisions are required.

The ExA asked if negotiations were on track to be concluded before the close of Examination.

Ms Brodrick on behalf of the Applicant confirmed that the Applicant was confident that matters would be concluded prior to the close of the Examination.

Network Rail

Ms Brodrick confirmed that the PPs and the accompanying framework agreement are substantially in an agreed form. New technical and business clearance for Network Rail was granted on 30 March 2022. As set out in Network Rail's deadline 2 submission, the outstanding issues relate to use of level crossings. Some drafting is being discussed in relation to requirement 18 and additional paragraphs to be included in Part 4 of Schedule 9. The proposal is to add some wording to the outline construction traffic management plan. Ms Brodrick believed there could be agreed wording to include at deadline 3.

The ExA asked if requirement 18 had been amended.

Ms Brodrick on behalf of the Applicant confirmed that requirement 18 would be amended to have the outline construction traffic management plan approved by Network Rail and that Part 4 of Schedule 9 would be amended accordingly.

Ms Brodrick also clarified that there were outstanding points for discussion with Network Rail on the use of level crossings by construction traffic. The proposal is to add wording to Outline Construction Traffic Management Plan. It is believed an agreed form of wording can be included for deadline 3 to cover Network Rail's concerns.

Ms Brodrick on behalf of the Applicant confirmed that Requirement 18 would be amended to include reference to the Construction Traffic Management Plan having been consulted and approved by Network Rail and that Part 4 of Schedule 9 would include some provisions to deal with how the Construction Traffic Management Plan will be approved with reference to timescales and the types of conditions that can be added by Network Rail.



Ms Brodrick noted finally that Network Rail and the Applicant were not yet in agreement on Wansford Road Crossing but that Applicant was confident that agreement would be reached before the close of the examination.

Environment Agency ("EA")

Ms Brodrick confirmed that the submission made by the EA the day before the hearing accords with the meeting that took place on 8 April 2022 between the EA and the Applicant. The Applicant is waiting for an update from the EA's legal department on any changes required to the PPs. Ms Brodrick clarified that the Applicant again believed negotiations would be concluded before the close of the examination.

The ExA noted that the Applicant is confident on concluding negotiations with several statutory undertakers before the close of examination but noted that if agreement was not reached by deadline 7, the Applicant would need to submit a case pursuant to section 127(6)/138 PA 2008 at deadline 7 as the ExA does not consider that Appendix C of the Statement of Reasons would be sufficient to enable it to report to the Secretary of State.

Ms Brodrick on behalf of the Applicant confirmed this would be done if agreement was not reached by deadline 7.

MMO

The EXA drew the Applicant's attention to comments from the MMO on typos in Schedule 9. Ms Brodrick confirmed the Applicant had noted these and was reviewing.

Neo

Mr Phillips on behalf of the Applicant confirmed that the Applicant had provided draft PPs to Neo Energy (SNS) Limited for discussion. The Applicant can confirm that no response from Neo Energy (SNS) Limited on these protective provisions has been provided by deadline 3. The draft protective provisions have been included in the updated DCO submitted at deadline 3.

Other parties

Mr Phillips on behalf of the Applicant explained that no PPs with Perenco UK Limited, Harbour Energy or Bridge Petroleum Limited were expected as these parties were negotiating commercial agreements with the Applicant. Subsequently however, the Applicant has decided to progress protective provisions with Perenco UK Limited as Perenco are struggling to commit resource to



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		progress commercial discussions. The draft protective provisions have been sent to Perenco on 21
		April 2022 for their comment. The protective provisions will be submitted into the Examination at
		deadline 4.
	e 15 of the draft DCO – documents to be certified	
Co.	mmitments Register	Mr Phillips on behalf of the Applicant confirmed the purpose of the Commitments Register is as a
The	e ExA asked the Applicant to comment on the	signposting tool rather than a method of mitigation. The Commitments Register sets out in one
MM	10's representation regarding the Commitments	place the list of certified documents and commitments and is intended to be a document which
Re	gister.	assists interpretation of the DCO.
Ce	rtified documents	Mr Phillips also confirmed that Schedule 15 (certified documents) had now been separated into
		documents forming part of the ES (Part 1) and all other documents (Part 2).
genda item 6 – Securing	HRA compensation measures that have been advance	ed on a without prejudice basis
The	e ExA noted that the updated DCO submitted at	Mr Phillips on behalf of the Applicant noted that the roadmaps submitted at deadline 2 set out
dec	adline 2 contained compensation measures for	drafting to secure compensatory measures for all species in respect of which a without prejudice
kitt	tiwake and asked how the Applicant proposed to	derogation case had been submitted.
sec	cure other compensation measures.	The ExA requested that going forwards all the compensation measures on a without prejudice basis
		should be collated into one document and submitted together.
		The Applicant has therefore provided a standalone document containing the without prejudice
		compensatory measures drafting for all species submitted at deadline 3 submission (G3.12).
genda item 7 – consents	s, licences and other agreements including any transbo	undary matters
The	e ExA queried whether any section 106 agreements	Ms Brodrick on behalf of the Applicant confirmed that no section 106 agreements are proposed for
we	re being entered into in respect of the scheme.	Hornsea Four. The only reference in the DCO to section 106 agreements are those the Applicant is
		seeking to have disapplied.
he ExA adjourned the h	earing at 12:46pm.	

G3.14

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Table 2: Action Points

Action	Description	Action by	Deadline	Applicant's Comment/where has the action been answered.
1	Update the draft Development Consent Order (DCO) to incorporate any changes as a result of the Applicant's review of the recent Secretary of State decisions on East Anglia ONE North and East Anglia TWO (the EAs).	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
2	Review the Applicant's response to ExQl DCO.1.24 [REP2-038] in regard to Schedule 1 Part 1 and confirm if now satisfied.	ММО	3	
3	Applicant to review the definition of 'bridge link' and in particular whether 'permanent offshore installation' assets should be defined or more specifically described.	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
4	Add 'under Article 38' at the end of the definition of commitments register.	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
5	Review the different definition for Marine Management Organisation provided in the Draft DCO and the Deemed Marine Licences (DMLs) and amend so the definition used is compatible between the DCO and the DML.	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
6	Review whether NATS should be defined in Article 2 or in Requirement 28(3) and amend the draft DCO in light of that review.	Applicant	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
7	Review whether a definition of 'intrusive' needs to be included within Article 2 as per the recent decisions on the EAs.	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
8	Provide copies/ further details of the Section 106 agreements defined in Article 2 for which disapplication is sought.	Applicant	4	Please see the requested documents attached below in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
9	Review the operations that are contained within the definition of "onshore site preparation works" in article 2.	Applicant and ERYC	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
10	Review Applicant's response to ExQ1 DCO.1.10 [REP2-038] and comment on the updated changes in article 8 of the draft DCO [REP2-061].	ERYC	3	



Action	Description	Action by	Deadline	Applicant's Comment/where has the action been answered.
11	Amend Article 10 (7) to 56 days.	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
12	Review/ amend/ respond as to whether Work No 2 should include the wording 'in the event that the mode of transmission is HVDC' or whether HVDC should be referred to at the relevant point in the alphabetical list.	Applicant	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
13	Review and respond to the use of Lowest Astronomical Tide (LAT) rather than Highest Astronomical Tide (HAT) in the Project Description and elsewhere, in light of the comments made at ISH1 by Trinity House (TH) and the Maritime and Coastguard Agency (MCA).	Applicant	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1. Additionally, a comparison of Lat, Hat and MSL were provided in RR-029-APDX:A-4 in G1.9 Applicant's comment on Relevant Representations.
14	Review/ amend / respond to whether the phrase 'been submitted to and approved in writing' is required given Requirement 29, and either retain the wording and delete Requirement 29 or delete the wording and retain Requirement 29; review all DCO Requirements to ensure consistency.	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
15	Review/ amend/ respond to whether Requirement 7 should be amended to reflect Requirement 12 (detailed design parameters onshore) of the DCO for EA ONE North, for the purposes of precision and enforceability.	Applicant	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
16	Amend Article 2 to include a definition for Historic England and amend Requirement 8 and 16 and the relevant conditions in the DMLs to refer to 'Historic England' rather than the 'Historic Buildings and Monuments Commission for England'	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
17	Provide updated comments on the wording of Requirement 9 in regard to the five-year aftercare period for landscaping.	Applicant	3	Please see updated document F2.8 Outline Landscape Management Plan submitted at Deadline 3.
18	Amend Requirement 11(2) to include lighting, signage and relevant safety measures	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.



Action	Description	Action by	Deadline	Applicant's Comment/where has the action been answered.
19	Review/ amend/ respond as to whether the details required by Requirement 13 (2) should be submitted at prior to commencement.	Applicant	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
20	Amend Requirement 15(2)(b) to add 'include'	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
21	Review Requirement 16(2) and 15(3) to see whether both elements are required and amend/ respond accordingly	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
22	Consider and propose content and form of draft plans which are referenced in the outline code of construction practice but for which there is currently no outline (eg communications plan, construction lighting plan).	Applicant	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
23	Review/ amend/ respond as to whether Requirement 24(1) should be amended to include 'in consultation with the Environment Agency' in light of its concerns about the effect of decommissioning on flood defences.	Applicant	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
24	Review/ amend/ respond to whether Part 4 (2)(1) period should run from the day after the application has been submitted or the day the application was validated.	Applicant and ERYC	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
25	To confirm how the commitment that maintenance / jack- up vessels would not impinge on the gap between the Proposed Development and the Hornsea 2 array would be secured.	Applicant	3	Please see comment above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
26	To amend Article 2 of Schedules 11 and 12 to include a definition for 'Order Limits'.	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
27	To confirm the position on drill arisings and precedent in recently made DCOs.	Applicant	3	Please see comments above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
28	Review/ amend/ respond to Historic England's request to amend Condition 13(1)(c) [REP2-076].	Applicant	4	Please see comments above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
29	Confirm Condition 13(1) in schedule 11 and schedule 12 differential regarding ornithological monitoring plan and amend accordingly.	Applicant	3	Please see comments above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
30	Insert condition title for Condition 14.	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.



Action	Description	Action by	Deadline	Applicant's Comment/where has the action been answered.
31	Condition 14(1) delete reference to outline in plans listed (a)- (d).	Applicant	3	Please see updated C1.1 Draft DCO including DML submitted at Deadline 3.
32	Review definitions in Part 1(1) to ensure consistency between Schedules 11 and 12 and review whether additional definitions are required for MHWS, MLWS, HVAC, HVDC and chart datum would be needed.	Applicant	3	Please see comments above in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1.
33	Review Applicant's Deadline 2 response to ExQ1 DCO.1.10 [REP2-038] regarding Article 8 and confirm if now satisfied.	ММО	3	
34	Review Applicant's Deadline 2 response to ExQ1 DCO.1.24 [REP2-038] regarding Article 10(7) and confirm if it is now satisfied.	ММО	3	
35	Review the recording of ISH1 and respond to any relevant points made by the Applicant or any other IPs. In particular: In regard to Article 5 transfer of benefit (approx. 01:30:00); In regard to proposed timescales (approx. 02:45:00); In regard to the Commitments Register being a signposting tool (approx. 03:10.00).	ММО	3	
36	Provide a justification as to why MMO is seeking different wording than that which has been contained in other recently-made DCOs, eg Norfolk Vanguard, Norfolk Boreas, East Anglia ONE North and East Anglia TWO.	ММО	3	
39	Note that if Protective Provisions have not been agreed by D7 (10 August 2022) submission of a section 127/ 138 case as an update to Appendix C of the Statement of	Applicant	7	Noted.



Action	Description	Action by	Deadline	Applicant's Comment/where has the action been answered.
	Reasons [REP2-022] as suggested by the Applicant in			
	response to ExQ1 CA.1.7 is not considered by the ExA			
	to be sufficient.			
40	On a without prejudice basis, for the securing of HRA	Applicant	4	Document submitted at Deadline 3 as G3.12 Without Prejudice
	compensation measures (should the ExA consider that the			Derogation Draft Development Consent Order Schedules.
	measures would be required) provide (combined in one			
	document) similar draft schedules (in both PDF and word			
	formats) to those set out in Schedule 16 so that they could			
	be easily attached to a recommended DCO.			



Appendix A Section 106 Agreements

These are the notes referred to on the following official copy

Title Number HS138762

The electronic official copy of the document follows this message.

This copy may not be the same size as the original.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

THIS AGREEMENT is made the 15th day of November One thousand nine hundred and ninety BETWEEN (1) THE COUNCIL OF THE EAST YORKSHIRE BOROUGH OF BEVERLEY in the County of Humberside (hereinafter called "the Council") and (2) CLIVE KINGSTON SOANES MARGARET EILEEN SOANES AND ANDREW MARK SOANES of LANGWELL LODGE NORTH DALTON in the said County (hereinafter called "the Owners") and (3) BARCLAYS BANK PLC of 4 NORTH BAR WITHIN BEVERLEY in the said County (hereinafter called "the Mortgagee")

WHEREAS

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- 1. The Council is the appropriate District Planning Authority for the purposes of the Town and Country Planning Acts and is the appropriate Principal Council for the purposes of the provisions of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 with regard to the land hereinafter described
- 2. The Owners are seised of the interest in fee simple in possession in land at Park House Farm Molescroft Beverley aforesaid ("the land") as shown edged black on drawing number 3/31123/1-18 attached hereto ("the drawing")
- 3. Application has been made to the Council as District Planning Authority under reference 307-35H for permission to use the land and the buildings erected thereon for purposes in connection with a broiler unit ("the development")
- 4. The Council is disposed to grant such permission but would be unwilling to do so in the absence of the covenants on the part of the Owners herein contained

NOW THIS AGREEMENT made under the provisions of section 106 of the Town and Country Planning Act 1990 and section 33 of the Local Government (Miscellaneous Provisions) Act 1982 witnesseth as follows 1. The Owners hereby covenant for themselves and their successors in title with the Council (to the intent that the provisions of the

said sections 106 and 33 shall apply to such covenants) that the

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following conditions restrictions and provisions relating to the development will be observed and performed


- (a) that the periodic monitoring and analysis of soil reserves for all areas of the land where manure spreading is undertaken will be carried out at intervals to be agreed in writing with the Council
- (b) that manure arising from the use of the land (the manure) will not be transported to or tipped on those areas of the land as are shown coloured pink or hatched black and white on the drawing without the prior consent in writing of the Council provided that manure may be spread on areas lettered (C) to (F) and coloured in pink on the said drawing subject to an agreement between the Owners and the occupier of the building indicated by the equivalent letter on the said drawing
- (c) that if the land or any part of it ceases to be owned or held on an agricultural tenancy the manure will not thereafter be transported to that part of the land no longer owned or tenanted without the prior consent in writing of the Council
- (d) that if any of the land shown becomes unavailable for storage or spreading of manure the Council will forthwith be notified in writing and shown on a plan areas proposed to take the place of that land which has become unavailable
- (e) that the manure will not be stored within 200 metres of any occupied buildings
 - (f) that the manure will not be stored on the land for a period exceeding one year or to a height greater than 4 metres.
 - (g) that the manure will be spread only in accordance with good agricultural practice and in such a manner as to ensure no nuisance or annoyance is caused to any person and in particular and without prejudice to the generality of the foregoing to ensure no pollution of any stream dyke watercourse or pond

- (h) that the manure will be cultivated into the ground as soon as practicable and in no circumstances more than 36 hours after spreading with the manure being at all times ploughed into the ground unless ploughing does not constitute acceptable agricultural practice
- (i) that the manure will not be spread or handled on any Sunday or public holiday
- (j) that the best available techniques for the spreading of manure will be employed and that the Council will be consulted from time to time as to the appropriateness of the techniques employed
- (k) that all dead birds will be removed from the land as soon as practicable to an authorised disposal facility
- (1) that a scheme for the removal and disposal of washed down water arising from the sheds will be submitted to the satisfaction of the Council
- (m) that the Council will be notified if the Owners cease to be Owners or agricultural tenants of the land or any part of it such notification to be in writing and to specify the land of which the Owners have ceased to be Owners or Tenants and to be given within 14 days of such cessation
- The Council hereby covenants with the Owners that it will forthwith grant planning permission
- 3. The expressions "the Council", "the Owners" and "the Mortgagee" shall include their respective successors in title and assigns
- 4. The Mortgagee hereby consents to the completion of this Agreement and acknowledges that from the date hereof all that land shown edged black on the drawing shall be bound by the restrictions and obligations contained herein

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IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed, the Owners have set their hands and seals and the Mortgagee has caused its Common Seal to be hereunto affixed the day and year first before written 5677 THE COMMON SEAL of THE EAST YORKSHIRE BOROUGH OF BEVERLEY) BOROUGH COUNCIL was hereinto affixed in the presence of: Chief by the said CLIVE KINGSTON SOAM SIGNED SEALED and DELIVERED by the said MARGARET EILEEN SOZ SIGNED SEALED and DELIVERED by I e said ANDREW MARK in the THE COMMON SEAL OF BANK PLC was hereunto affixed in the presence of: Director Assistant Secretary Authorised Sealing Officer initial Ta



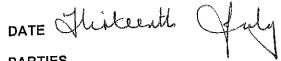
- LISSETT AIRFIELD WIND FARM (1)
 LIMITED
 - JAMES HERBERT TENNANT (2)
- EAST RIDING OF YORKSHIRE (3)
 COUNCIL

Planning Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) relating to Change of Use and Construction of Associated Facilities at Lissett Airfield, near Bridlington, East Riding of Yorkshire

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2007



PARTIES

- EAST RIDING OF YORKSHIRE COUNCIL of County Hall, Beverley, Yorkshire (1)
- JAMES HERBERT TENNANT of Manor House Farm Fraisthorpe Bridlington East (2)Yorkshire YO15 3QT ("Owner")
- LISSETT AIRFIELD WIND FARM LIMITED (Co Regn No 6137102) of 30 Bedford (3)Street London WC2E 9ED ("Novera")

INTRODUCTION

- ERYC is the local planning authority for the purposes of the Act for the area in 1 which the Site is situated.
- The Owner is the freehold owner of the Site including the Blue Land comprised in 2 the title numbers listed in Schedule 1.
- Novera has an interest in the Blue Land by virtue of an option for lease dated 22 3 May 2007 and made between the Owner and Novera and Novera Energy Limited ("Option for Lease").
- The Application has been submitted to ERYC and the parties have agreed to enter into this Deed in respect of the Blue Land in order to secure the planning obligations contained in this Deed.
- ERYC resolved on 22 February 2007 to grant the Planning Permission subject to 5 the prior completion of this Deed.
- This Deed supersedes the previous planning agreement made pursuant to Section 6. 106 of the Town and Country Planning Act 1990 (as amended) made between the parties to this Deed and dated 28 June 2007 ("the Previous Planning Agreement") and the parties to this Deed agree and confirm that the Previous Planning Agreement and everything contained in it has ceased to have effect and determined and any local land charge relating to the Previous Planning Agreement shall be cancelled

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

DEFINITIONS 1

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"

the Town and Country Planning Act 1990

"Application"

the application for full planning permission and allocated reference number 06/05618/STPLFE submitted to ERYC for the Development

"Blue Land"

those parts of the Site shown coloured blue on the Plan which are to be bound by the terms of this Deed

Operations"

"Commencement of Commercial the commencement of production of electricity for exporting to the National Grid

"Commencement of Development" the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, environmental mitigation set out in the planning conditions contained in the Planning Permission or required by the RSPB, and/or the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly

"Community Windfarm Fund"

THE REPORT OF THE PROPERTY OF

a scheme incorporated to promote initiatives for the benefit of the community within the electoral ward of East Wolds and Coastal in the East Riding of Yorkshire (with a preference for appropriate initiatives within the proximity of the Development where practicable in accordance with the constitution to be established in accordance with Paragraph 4.1 of the Third Schedule)

"Complaint Date"

the date of receipt of any complaint regarding television strength within the Shadow Area received by the Owner or Novera or ERYC following Commencement of Development

"Decommissioning Monies"

a sum equal to the product of £5,000 per mega watt and the operating capacity of the Wind Farm (once operational) in mega watts (expected to be 30 mega watts) as known at the date of the payment required under paragraph 6.1 of Schedule 3

"Development"

the Development of the Blue Land for a wind farm as set out in the Application and pursuant to the Planning Permission

"HEYwoods Contribution"

the sum of £20,000

"HEYwoods Initiative"

the strategy for trees and woodland in the East Riding of Yorkshire and Kingston upon Hull

"Index"

All Items Index of Retail Prices issued by the Office for National Statistics

"Interest"

interest at two per cent per annum above the base lending rate of Barclays Bank Plc from time to time.

"Lease"

means a lease of the Blue Land (excluding the access routes and other parts of the Blue Land not demised) entered into under the Option for Lease

"Occupation"

Occupation for the purposes of carrying out commercial operations following completion of commissioning of the Development and "Occupy" and "Occupied" shall be construed accordingly

"Parking Contribution"

the sum of £30,000 being the estimated cost of the construction of the Parking Scheme pursuant to paragraph 3.2.2 of the Fifth Schedule hereto

"Plan"

the plan attached to this Deed

"Planning Permission"

the full planning permission for the Development to be granted by ERYC pursuant to the Application and subject to the conditions as set out in the Second Schedule

"Reserve Fund"

a fund to be held in the name of ERYC for the

decommissioning of the Wind Farm

"Site"

the land as shown edged red on the Plan

"Wind Farm"

the wind farm authorised by the Planning

Permission

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, Councils and firms and all such words shall be construed interchangeably in that manner.

- 2.4 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or reenactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of ERYC the successors to its statutory functions.

3 <u>LEGAL BASIS</u>

- 3.1 This Deed is made pursuant to Section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner and Novera under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by ERYC as local planning authority against the Owner and Novera.

4 CONDITIONALITY

This Deed is conditional:

- (i) in relation to clauses 5 to 13 inclusive and paragraphs 1.1, 2.1, and 3.1 of the Third Schedule upon the grant of the Planning Permission; and
- (ii) in relation to the remaining provisions of this Deed upon the Commencement of Development.

save for the provisions of Clause 4 (Conditionality) and Clause 14 (Delivery) and Clause 7.10 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S AND NOVERA'S COVENANTS

5.1 The Owner, as owner of the Blue Land, covenants with ERYC so as to bind the Blue Land and each and every part thereof to observe and perform the covenants set out

in the Third Schedule and that the Blue Land will be subject to the restrictions set out in the Fifth Schedule.

Novera consents to the completion of this Deed and acknowledges that the Blue Land shall be bound by the restrictions and obligations contained herein and covenants with ERYC to observe and perform the covenants set out in the Third Schedule during such period as Novera (or any successor in title) has an interest in the Blue Land pursuant to the Option for Lease or Lease.

6 ERYC'S COVENANTS

6.1 ERYC covenants with each of the Owner and Novera as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.2 This Deed shall be registrable against the Blue Land as a local land charge by ERYC.
- 7.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner or Novera from ERYC under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of ERYC by the Chief Executive (or persons from time to time designated by the Chief Executive) and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) from time to time of the relevant party.
- 7.4 Following the performance and satisfaction of all the obligations contained in this Deed or in the event that clause 7.6 of this Deed applies ERYC shall as soon as reasonably possible on receipt of a written request procure the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.5 Insofar as any clause or clauses of this Deed is or are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed in relation to the Blue Land or a part thereof after it shall have parted with its entire interest in the Blue Land or the relevant part thereof but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.8 Nothing in this Deed shall prohibit or limit the right to develop the Site or any part thereof in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) before or after the date of this Deed.
- 7.9 Novera will pay to ERYC £800 towards its expenses in preparation of this Deed on completion of this Deed.
- 7.10 The Previous Planning Agreement and everything contained in it has wholly ceased to have effect and determined and any local land charge relating to the Previous Planning Agreement has been cancelled.

8 WAIVER

No waiver (whether expressed or implied) by ERYC (or Owner or Novera) of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent ERYC (or Owner or Novera) from enforcing any of the relevant covenants terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner agrees with ERYC to give ERYC immediate written notice of any change in ownership of its interest in the Blue Land or any part thereof occurring before all the obligations under this Deed have been discharged or the provisions of clause 7.6 of this Deed apply such notice to give details of the transferee's full name and registered office (if a company or usual address if not) (together with the extent of the part of the Blue Land purchased by reference to a plan in the event of a transfer of part only of the Blue Land).

10 INDEXATION

The sums referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sums are payable.

11 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12 <u>VAT</u>

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England.

14 <u>DELIVERY</u>

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

Details of the Owner's title to the Blue Land

The Owner's title is registered at H M Land Registry with title absolute under title number:

YEA43857

YEA43627

YEA43621

YEA43619

YEA43425

YEA43647

YEA43445

YEA43222

YEA43876

YEA43607

YEA43589

YEA43837

YEA43570

YEA43838

SECOND SCHEDULE

Form of notice of planning permission

Jennifer Smith Terence O'Rourke Ltd 9 - 10 St Andrew Square Edinburgh EH2 2AF

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Application No: DC/06/05618/STPLFE/STRAT

Case Officer: Mr Dave Cox

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TOWN AND COUNTRY PLANNING ACT 1990

Application Type:

Strategic - Full Planning with EIA

Proposal:

Erection of a 12 turbine windfarm, permanent 80m anemometer mast, control

building and parking area, and improved junction to A165

Location:

Disused Airfield Acc Rds, Lissett, East Riding Of Yorkshire,

Applicant:

Novera Energy Limited

The above application has been considered by the Council in pursuance of their powers under the above mentioned Act and has been **APPROVED**, in accordance with the terms and details as submitted, and subject to the following conditions:

- 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 - This condition is imposed in order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990.
- 2. The development hereby permitted shall take place strictly in accordance with the terms of the submitted application and plans. The maximum height to tip of turbine blade will be 125 metres.
 - This condition is imposed because in reaching its decision, the Local Planning Authority has had regard to all the information submitted.
- 3. This permission is for a period not exceeding 25 years from the date that electricity from the development is first connected. Within three months of the cessation of electricity generation at the site, a scheme for the removal from the site of the turbine and associated works, including, unless otherwise agreed by the Local Planning Authority, the turbine foundations and underground cabling, and the restoration of the land to its previous condition, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter restoration shall be completed in accordance with the approved scheme within 12 months of the restoration scheme being approved by the Local Planning Authority, or such other period as the Authority may agree.

Page 1 of 9 See Accompanying Notes on Page 9 This condition is imposed to protect the visual amenities of the area and to ensure that the land is restored to its former condition.

4. No development shall take place until details of the external appearance (including colour finishes) of the turbine to be erected have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out as approved and the agreed colour finishes of the wind turbines shall not be changed without the prior consent in writing of the Local Planning Authority.

This condition is imposed in order to ensure there is a satisfactory relationship between the proposed development and the surrounding area.

5. Construction work shall not commence until such time that a construction programme detailing the operations likely to generate the highest levels of noise and dust has been submitted to and approved in writing by the Local Planning Authority and construction work shall be carried out in accordance with the approved construction programme.

The construction programme shall clearly identify all roadways, temporary or otherwise, to be used for the conveyance of construction materials, plant and equipment and shall include appropriate measures for the minimisation of noise and the egress of mud and dust from the site by construction vehicles.

The construction programme shall also identify areas on site, designated for the storage of heavyduty plant and equipment, including vehicles and adequate car parking facilities for construction site operatives and visitors.

This condition is imposed to protect the amenity of nearby properties from adverse effects due to noise and dust.

6. Construction works shall not commence until such time that a code of good working practice to control fugitive emissions of dust arising from on site activities has been submitted to and approved in writing by the Local Planning Authority. The site contractor shall adopt such a code of practice and the applicant shall monitor compliance with it.

The code of practice shall include activities such as earth moving, on site aggregate mixing, crushing, screening, etc., and onsite storage and transportation of raw material.

This condition is imposed to protect the amenity of nearby properties from adverse effects due to dust.

7. The development shall not commence until such time as a construction programme detailing the operation in particular reference to the mitigation of noise and dust has been submitted to and approved in writing by the Local Planning Authority and construction works shall be carried out in accordance with the approved construction programme.

The programme shall identify:

- i) Areas on site, designated for the storage of heavy-duty plant and equipment, including vehicles and car parking facilities for construction site operatives and visitors.
- ii) Activities such as earth moving, onsite aggregate mixing, crushing, screening, piling etc., and onsite storage and transportation of raw material.
- iii) Working practices to control fugitive emissions of dust arising from onsite activities e.g. wheel wash facilities.
- iv) Working practices for protecting the nearby residential dwellings, including measures to control noise and vibration arising from on site activities, such as piling, as set out in British Standard 5228 Part 1: 1997 Noise and Vibration Control on Construction and Open Sites.

This condition is imposed to protect the amenity of nearby properties from adverse effects due to noise and dust.

8. Deliveries to and from the site and the loading or unloading of raw materials during the construction phase of the development shall be restricted to the hours of 08.00 to 18.00 Monday to Friday and 08.00 to 13.00 on a Saturday, except as may otherwise be agreed in writing with the Local Planning Authority. No deliveries on Sundays or Bank Holidays.

This condition is imposed to protect the amenity of nearby properties from adverse effects due to noise nuisance.

9. During construction, operation shall be restricted to the hours of 08.00 to 18.00 hours Monday to Friday and 08.00 to 13.00 hours on a Saturday, except as agreed in writing with the Local Planning Authority. No operation on Sundays or Bank Holidays.

This condition is imposed to protect the amenity of nearby properties from adverse effects due to noise nuisance.

10. No open burning of any waste material shall be permitted within the site. Any inadvertent fire should be treated as an emergency and extinguished immediately.

This condition is imposed to protect the amenity of local residents from the adverse effects of smoke nuisance.

11. At the reasonable request of and following complaint to the Council, the operator of the development shall measure and assess at its expense the level of noise emissions from the wind turbine generators following the procedures described in 'The Assessment and Rating of Noise from Wind Farms, ETSU-R-97' published by ETSU for the Department of Trade and Industry.

This condition is imposed to protect the amenity of local residents from the adverse effects due to noise nuisance.

12. Noise emissions from the site (as measured LA90, 10mins) in free-field conditions, at any noise sensitive premises in existence prior to the development or which have already been given planning permission, shall not exceed the greater of 35 dB(A) of 5 DB(A) above the background noise level (LA90, 10mins) during the quiet daytime and shall not exceed the greater of 38 dB(A) or 5 dB(A)

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above the background noise level (LA90, 10 mins) during night time at all wind speeds up to 12m/s. Quiet daytime means all evenings from 6.00pm to 11.00pm plus Saturday afternoon from 1.00pm to 6.00pm and all day Sunday 7.00am to 6.00pm. Night time is defined as 11.00pm to 7.00am.

This condition is imposed to protect the amenity of local residents from the adverse effects due to noise nuisance.

13. Tonal noise shall be measured by the operator of the development at its expense for audibility at the reasonable request of and following a complaint to the Council in accordance with the procedure described in ETSU document at page 102 (paragraph 2). 'The Assessment and Rating of Noise from Wind Farms, ETSU-R-97' published by ETSU for the Department of Trade and Industry.

This condition is imposed to protect the amenity of local residents from the adverse effects due to noise nuisance.

- 14. If, at any property, the tonal noise from the combined effect of the wind turbines' generators exceeds the threshold of audibility:
 - a) by more than 2.0dB but less than 6.5dB a penalty of ((5/6.5) x Audibility) dB shall be added to the noise level derived for that property in accordance with the procedure described in ETSU (pages 102-103 (paragraphs 2-5)).
 - b) by more than 6.5dB a penalty shall be added to the noise level derived for that property in accordance with the procedure described in ETSU (pages 102-103 (paragraphs 2-5)).

This condition is imposed to protect the amenity of local residents from the adverse effects due to noise nuisance.

15. Upon receiving notification from a Local Planning Authority Development Control Officer or an Environmental Health Officer of the Council that a nuisance or annoyance in his or her reasonable opinion is being caused to occupiers of dwellings from one or more turbines by noise exceeding conditions 12 and 14 above, the operator will on receipt of that notification immediately investigate the source of the excessive noise. If the source of the excessive noise cannot be identified and rectified within 48 hours of the above notification, operation of the wind turbine shall stop until such time as remedial action can be taken.

This condition is imposed to protect the amenity of local residents from the adverse effects due to noise nuisance.

16. The operator of the development shall produce wind speed, wind direction and turbine operational status data to the Local Planning Authority at its reasonable request to enable compliance with and performance under conditions 12 and 14 to be monitored. The data shall include the wind speed in metres per second and the wind direction in degrees from north for each 10 minute period. The measuring periods shall be set to commence on the hour and in 10 minute increments thereafter. The data shall be provided in a format to be agreed with the Local Planning Authority. Where wind speed is measured at a height other than 10m, the wind speed data shall be converted to a 10m height, accounting for wind shear by a method to be agreed with the Local Planning Authority.

This condition is imposed to protect the amenity of local residents from the adverse effects due to noise nuisance.

17. The blades of all the wind turbines shall rotate in the same direction.

This condition is imposed to protect the amenity of local residents from the adverse effects due to noise nuisance.

18. Within three months of the installation of the first turbine, a scheme of noise mitigation shall be submitted for the written approval of the Local Planning Authority. The scheme of noise mitigation shall include a methodology that sets out the background noise levels, the predicted noise levels, noise monitoring locations and appropriate remediation measures. The approved scheme of noise mitigation shall be implemented as approved.

This condition is imposed to protect the amenity of local residents.

19. If any wind turbine hereby permitted fails to produce electricity for supply to the grid for a continuous period of 12 months, the wind turbine and ancillary equipment shall be removed from the site within a period of 9 months from the end of the 12 months period and the site returned to its former agricultural use.

This condition is imposed to protect the amenity of local residents from the adverse effects due to noise nuisance.

20. No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority (PPG 16, para 30; Circular 11/95, Model Clause 55).

The scheme shall provide for:

- (i) The proper identification and evaluation of the extent, character and significance of archaeological remains within the application area.
- (ii) an assessment of the impact of the proposed development on the archaeological remains.
- (iii) proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ wherever feasible.
- (iv) sufficient notification and allowance of time to archaeological contractors nominated by the developer to ensure that archaeological fieldwork as proposed in pursuance of (i) and (iii) above is completed prior to the commencement of permitted development in the area of archaeological interest, and
- (v) notification in writing to the Curatorial Officer of the Humber Archaeology Partnership of the commencement of archaeological works and the opportunity to monitor such works.

This condition is imposed as the site lies within a major archaeological landscape, from which archaeological material from a variety of periods has previously been identified, including a substantial Anglo-Saxon cemetery within the application area.

21. No construction or de-commissioning works shall take place during the main bird breeding season (March to July), unless otherwise agreed in writing with the Local Planning Authority.

This condition is imposed in order to protect nesting birds during the breeding season.

22. The proposed six monthly scheduled maintenance visits shall not take place during the main bird breeding season (March to July), unless otherwise agreed in writing with the Local Planning Authority.

This condition is imposed in order to protect nesting birds during the breeding season.

23. A strip of land 9 metres wide adjacent to the top of both banks of all watercourses on site shall be kept clear of all new buildings and structures (including gates, walls, fences and trees) unless agreed otherwise in writing with the Local Planning Authority in consultation with the Board. Ground levels must not be raised within this area. Access arrangements should be agreed with the Internal Drainage Board.

This condition is imposed to allow satisfactory maintenance of watercourses and the adjacent banks.

24. The construction specification, design and layout of the site access off the A165 together with any proposed traffic management measures is to be submitted to and agreed in writing with the Local Planning Authority and no works shall be commenced on site until the approved access has been constructed in accordance with the approved plans.

This condition is imposed in the interest of highway safety and to secure a safe and satisfactory access to the site for construction and future maintenance traffic.

25. No development shall be commenced until details of the proposed haul route for abnormal loads has been submitted including a programme of works for any improvements to the highway, delivery times and methodology for the delivery of the apparatus to ensure that the abnormal load do not have a significant impact on other highway users of the abnormal load route.

This condition is imposed in the interest of highway safety and the efficiency of the highway network.

26. No development shall be commenced until details of the route for the delivery of materials to the site have been submitted to and agreed in writing with the Local Planning Authority.

This condition is imposed in the interests of highway safety.

27. No development shall commence on site until wheel cleaning facilities have been provided within the curtilage of the site in accordance with details to be submitted to and approved in writing by the

Local Planning Authority and this facility shall be retained in working order and operated throughout the duration of the construction works.

This condition is imposed in the interests of highway safety.

28. No development shall be commenced until details of the road safety plan, deflectograph and visual/video surveys of the haul and delivery routes, including a programme and methodology for improvements and repairs and the funding provision for improvements/repairs have been submitted to and approved in writing by the Local Planning Authority and during the construction period any improvement or repair works on the approved routes shall be completed in accordance with the approved programme and methodology and the road safety plan shall be updated in consultation with the Local Planning Authority.

This condition is imposed in the interests of highway safety and to secure any necessary improvements and repairs to the highway network as a consequence of the development.

- 29. No less than 14 days prior to the development commencing, the applicant must notify the Local Planning Authority of the following information:
 - (a) the date of the commencement of construction;
 - (b) the estimate date of completion of the construction;
 - (c) the height above ground of the tallest structure;
 - (d) the maximum extension height of any construction equipment;
 - (e) confirmation of whether the structure will be lit with air navigation warning beacons.

This condition is imposed in order to enable the Local Planning Authority to notify Defence Estates Safeguarding in the interests of aviation safety.

30. No development shall take place until a scheme of aviation obstruction lighting has been submitted to, and approved by, the Local Planning Authority. Development shall be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.

This condition is imposed in the interest of aviation safety.

- 31. Wildlife Mitigation of Construction and Operational Works
 - a) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority in consultation with Natural England, a Scheme of Mitigation for the construction and operational works during the use of the site which shall include all of those mitigation measures described in Chapters 6 and 7 of the Environmental Statement Report dated June 2006. For the avoidance of doubt the Scheme shall include provisions for report back to the Local Planning Authority and Natural England following implementation of the scheme and for its future management and maintenance.
 - b) The Scheme of Mitigation approved under part (a) above shall be implemented in its entirety prior to the first bringing into use of the development and shall thereafter be retained in accordance with the approved programme unless otherwise previously agreed in writing by the Local Planning

Authority.

This condition is imposed on the interests of nature conservation and in the interests of the provision of foraging areas for Marsh Harriers out of the collision envelope.

Note to Applicant:

Approved Drawings

This planning permission has been granted in accordance with the following plans and drawings:-

Drawings and plans contained in Lissett Airfield Windfarm - Environmental Statement

The development should take place only in accordance with these drawings. If you are working to drawings, which have different numbers or different revisions, then you are advised to contact the Planning Department before starting work to check what further action may be required. If the drawings are significantly different from the approved drawings it is possible that a further planning permission may be required.

Relevant Planning Policies

National Planning Policies

PPS1 - Delivering Sustainable Development - January 2005
PPS7 - Sustainable Development in Rural Areas - August 2004
PPG15 - Planning and the Historic Environment - September 1994

PPS22 - Renewable Energy - August 2004 PPG24 - Planning and Noise - September 1994

Regional Spatial Strategy

N3 - Landscape Character S5 - Climate Change

S6 - Sustainable Use of Physical Resources

R12 - Energy Generation Transmission and Supply

Joint Structure Plan for Kingston upon Hull and the East Riding of Yorkshire

DS5 - The Countryside

DS6 - General Development Guidelines

ENV1 - Biodiversity
NAT11 - Renewable Energy
SP4 - Landscape Character

East Yorkshire Borough Wide Local Plan

EN2 - Open Countryside

EN9 - National Nature Conservation Sites
EN10 - Local Nature Conservation Sites

EN25 - Renewable Energy

The proposal has been considered against the above policies and it is considered that the scheme accords with these policies, and there are no material considerations, which indicate a decision should be otherwise.

Reason for Decision

The proposed windfarm would provide renewable energy, which is encouraged by national and local policy. It would not result in significant harm to the character of the landscape, open countryside, residential and visual amenity, wildlife and communications. There are no technical reasons not to grant consent. The proposal complies with policy and is therefore recommended for approval.

DRAFT
Signed Date: 12 July 2007

Huw Roberts, Director of Customer Services

THIRD SCHEDULE

Owner's covenants to ERYC

1 TV Interference

- 1.1 Not to Commence Development until completion of a:
 - 1.1.1 Desk top study to identify the area where television signal strength may be affected by the operating Wind Farm ("Shadow Area"); and
 - 1.1.2 Survey of television signal strength in the Shadow Area to measure actual television strength ("Baseline Study").
- 1.2 Within 6 months of the Commencement of Commercial Operations of the Wind Farm to complete or procure the completion of a second survey of television signal strength within the Shadow Area to measure any reduction in television signal strength ("Operational Survey"). Prior to carrying out both the Baseline Study and the Operational Survey to secure the approval of ERYC to the company or organisation proposed to carry out these studies ("the Approved Body"). Both the Baseline Study and Operational Survey must be carried out in accordance with the best practice recommended by the Confederation of Aerial Industries. Copies of the Baseline Study and Operational Survey results must be provided to ERYC within one calendar month of the completion of such surveys.
- 1.3 After Commencement of Development and within six weeks of the Complaint Date to procure the investigation of that complaint by the Approved Body as soon as reasonably practicable to determine if the television signal strength at the complainant's property has been affected by the Development ("Complaint Survey"). ERYC will be notified within 7 days of the receipt of any notice of complaint the Owner or Novera receives and ERYC will pass any letter of complaint it receives as soon as reasonably practicable to the Owner and Novera. A copy of the Complaint Survey must be provided to ERYC by the Owner or Novera within three calendar months of the Complaint Date for any complaint. There shall be no obligation to give notification of any notice of complaint or to carry out a Complaint Survey or procure the carrying out of a Complaint Survey after eighteen months of Commencement of Commercial Operations.

- 1.4 If the Operational Survey or Complaint Survey shows that signal strength within the Shadow Area and at the complainant's house is lower than the signal strength measured during the Baseline Survey then subject to agreement with the complainant to undertake works necessary the Owner or Novera (as the case may be) shall restore television signal strength to the level that existed in the Baseline Survey which may include one or more of the following, re-aligning television aerials, installing equipment to boost signal strength, installing digital receiving equipment and installing a satellite dish ("Remedial Works") and the Remedial Works must be undertaken free of cost to the complainant.
- 1.5 If the Remedial Works described in paragraph 1.4 above are not carried out within a period of three months of the Complaint Date for any individual complaint despite the agreement of the complainant ERYC will be entitled at its discretion to carry out the Remedial Works and recover the cost from the Owner or Novera.

2 <u>Community Liaison</u>

- 2.1 Prior to Commencement of Development the Owner or Novera (as the case may be) shall establish or procure the establishment and administration of a community liaison forum ("Forum") to consist of at least one representative from each of Novera and ERYC and Lissett and Ulrome Parish Council together with a representative of the tourism industry within the East Riding of Yorkshire as nominated by ERYC from time to time (and at which Novera shall procure attendance by its representatives) and any other Parish Council representatives from the areas of Beeford, Kelk, Barmston and Fraisthorpe, Skipsea and Foston on the Wolds, which ERYC thinks appropriate shall be invited to attend such a forum. A meeting of the Forum shall be called at appropriate intervals being at least once from the granting of Planning Permission until Commencement of Development and at monthly intervals from Commencement of Development until Commencement of Commercial Operations and at such later period or periods following Commencement of Commercial Operations as may be considered desirable or necessary at the reasonable request of ERYC and will provide an update on progress with the development at the Wind Farm.
- 2.2 Novera shall appoint a representative of Novera as a liaison officer to act as a point of contact for members of the Forum and for all matters associated with the construction and operation of the Development. The liaison officer shall attend meetings of the Forum.

3 Tree Planting

3.1 To pay the HEYwoods Contribution to ERYC before Commencement of Development for planting and maintaining planted trees and any ancillary activities thereto within the East Riding of Yorkshire for the purposes of the HEYwoods Initiative or any successive initiative or projects for the planting of trees and woodland within the East Riding of Yorkshire.

4 Community Windfarm Fund

- As soon as practicable after Commencement of Development to establish a constitution for the Community Windfarm Fund ("the Constitution") in liaison with the Assistant Chief Executive, Economic Development of ERYC or such person as ERYC shall so designate provided that it is agreed that in the event of failure to agree the Constitution at the time of Commencement of Commercial Operations ERYC may establish the Constitution acting by the Assistant Chief Executive or such person as ERYC shall designate. The Constitution shall set out the basis on which monies may be paid out of the Community Windfarm Fund. The Community Windfarm Fund membership shall administer the distribution of the Community Windfarm Fund and will be composed of at least one representative from each of ERYC and Novera and Novera shall procure the attendance of its representative.
- 4.2 Within ten business days of 1 January in each complete year following Commencement of Commercial Operations to pay to ERYC to hold for the purposes of the Community Windfarm Fund a sum equal to the product of £2,000 and the operating capacity of the Wind Farm installed on the Blue Land in mega watts ("Annual Payment"). During the first and last calendar years of the Commencement of Commercial Operations on the Blue Land there must be paid to the Community Windfarm Fund a sum equal to Annual Payment multiplied by the number of days the Wind Farm operated divided by 365 ("First and Last Payment").

5 Site Interpretation Board and Memorial to 158 Squadron

As soon as practicable after Commencement of Development (subject to planning permission or necessary consents being obtained if necessary) to construct or procure the construction of suitable parking at a location within highway land (which Novera and the Owner anticipate will be on Gransmoor Road, Lissett, East Riding of Yorkshire) in accordance with a detailed scheme to be previously agreed in writing by ERYC.. The parking to be provided under this paragraph shall mean an area of no

- more than 15 metres by 25 metres with the intention of providing car parking for approximately 5 cars ("Parking Scheme").
- As soon as practicable after implementation of the Parking Scheme to construct on the parking area described in paragraph 5.1 of this Schedule a site interpretation board (a draft of which is set out in Schedule 6 for illustrative purposes ("Draft Site Interpretation Board")) which is to be agreed with ERYC ("Final Site Interpretation Board").
- As soon as practicable after Commencement of Commercial Operations a memorial to 158 Squadron close to the Final Site Interpretation Board shall be erected by the Owner or Novera in accordance with a design brief to be submitted to ERYC ("158 Memorial Scheme") and thereafter to be agreed in writing by ERYC and the Owner. The 158 Squadron Association and ERYC shall also be consulted on the final design of the memorial which shall be in a form agreed by the Owner. The location of the 158 Memorial Scheme is to be agreed prior to Commencement of Commercial Operations by ERYC, Novera and the Owner.

6 Decommissioning the Wind Farm

- 6.1 Within seven days of completion of construction of the foundations and prior to erection of the wind turbine towers to be erected pursuant to the Planning Permission to pay to ERYC the Decommissioning Monies to be held in the Reserve Fund. The Decommissioning Monies must only be used for decommissioning the Wind Farm.
- 6.2 All interest earned from the Decommissioning Monies shall be an additional sum of monies contributing to the decommissioning of the Wind Farm and shall form part of the Reserve Fund.
- After the fifth, tenth, fifteenth and twentieth anniversary of the Commencement of Commercial Operations the Owner, Novera and ERYC shall review the level of the Reserve Fund and agree to increase or decrease (as appropriate) the Decommissioning Monies if the parties agree that the funds accrued are insufficient or surplus to pay for decommissioning the Wind Farm. Any repayment under this clause shall be made to the Owner or Novera in the proportion to which each has contributed to the payment of the Decommissioning Monies.
- 6.4 ERYC shall hold the Decommissioning Monies in ERYC's interest earning account until required for decommissioning of the Wind Farm.

- The Decommissioning Monies may only be withdrawn from the Reserve Fund by ERYC if the decommissioning of the Wind Farm is not carried out in accordance with the restoration scheme approved under the conditions attached to the Planning Permission ("Restoration Scheme").
- 6.6 If the decommissioning of the Wind Farm is carried out in accordance with the Restoration Scheme the Decommissioning Monies and interest accrued shall be returned forthwith to the person, body or company as directed by the Owner and Novera (save if Novera is no longer a company registered with Companies House where the instruction shall be from the Owner alone) such direction to be on the basis of first refunding to the Owner all or any sums incurred by the Owner in contributing to the Decommissioning Monies and/or in carrying out the Restoration Scheme and by then returning any balance to Novera.
- Any dispute arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this paragraph 6 shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated on the application of any of them by the President for the time being of the Law Society and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

FOURTH SCHEDULE

ERYC's Covenants

Repayment of contributions

- 1 ERYC hereby covenants with each of the Owner and Novera that it will ensure all sums received under the terms of this Deed will be used exclusively for the purposes for which they are provided.
- 2 ERYC shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

Discharge of obligations

3 At the written request of the Owner or Novera ERYC shall provide written confirmation of the discharge of the obligations contained in this Deed.

Tree Planting

4 ERYC shall ensure that no tree planted using the HEYwoods Contribution for the HEYwoods Initiative shall be within 1,000 metres of a wind turbine on the Blue Land without first obtaining the prior written consent of Novera nor on land owned by the Owner without first obtaining the prior written consent of the Owner. ERYC acknowledges that the preferred area for planting such trees is between the village of Gembling and the Blue Land and between the village of Kelk and the Blue Land and shall use reasonable endeavours to persuade HEYWoods Initiative to plant trees in these areas but otherwise within the East Riding of Yorkshire.

FIFTH SCHEDULE

Restrictions on the Blue Land

- 1. In relation to the Development no above ground pylons or wooden poles may be used on the Blue Land and any electrical cabling on the Blue Land must be buried.
- 2. There shall be no Commencement of Development until Novera and or the Owner have proposed to ERYC all of the Parking Scheme, Draft Site Interpretation Board and 158 Memorial Scheme.
- 3. There shall be no Commencement of Commercial Operations until:
 - 3.1 the location of the Memorial Board has been approved by ERYC; and
 - 3.2 either
 - 3.2.1 the Parking Scheme has been constructed to the reasonable satisfaction of ERYC; or
 - 3.2.2 the Parking Contribution has been paid to ERYC for the construction of the Parking Scheme.
- 4. There shall be no Commencement of Commercial Operations until the connection between the National Grid and the Development has been completed free from above ground pylons or wooden poles and until all electrical cabling between the Blue Land and the National Grid has been buried beneath ground (unless the electrical cabling must pass across a watercourse or drains) or unless otherwise agreed in writing by ERYC.

SIXTH SCHEDULE

DRAFT SITE INTERPRETATION BOARD

Lissett Airfield Draft Interpretation Board











The wind farm is sited on the former RAF Lissett Airfield which was built in 1942. This was the closest Yorkshire bomber airfield to Germany during the Second World War. From February 1943 it was occupied by the Halifax bombers of 158 Squadron RAF who remained there throughout the war. As well as the 3-runway airfield there was accommodation for around 1,800 people in seven sites to the east of the village. Around 250 raids were made from this base. 144 Halifaxes failed to return or were destroyed in operational crashes with the loss of over 400 aircrew.

Site history

The Technical Site was sited near the village and included the control tower tores and crew briefing room.

Thera was also a standard T2 hangal station armoury, gas defence centre, flight offices, prew rest looker and

There were 16 Halifax bombers used at any one, time at Lisseit with 4 in the base servicing pool. In commemoration of the 158 Sculadron FAF each of the 12 turbines have been han ad after one of the Halfax bombers that flew from Lisseit. These are identified on the plan below right.

Halifax LV907 or 'Friday the 18th' was a Halifax bomber that gained particular actiain oldring the war. The fuselage had a sickle, skull and crossbones and an inverted horseshoe. This aircraft was barbeularly fucky completing 128 oberations in total, the highest number according to was bomber command. Halifa

St James of Compostella Church in Lissett village has a memorial stone in the Churchyard and a staned glass window commemorating the '158' Squadron. The location of the church is



The wind farm

The Elssett Airfield Wind Farm was constructed in 2007/8. There are 12 turbines each 125m (410ff) in neight, each turbine produces 2 mega watts of electricity – the entire wind farm produces 24 mega watts of electricity which is equivalent to the 10% of the homes in the East Riding of Yorkshire.

The electricity generated is transmitted by underground cables to the national grid sub-station at Driffield.

Climate change

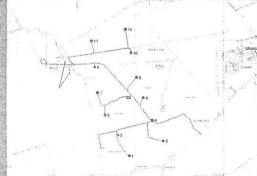
Local attractions

There are a range of local attractions and facilities in the area to visit. Lissett is only 4km from the sea and the heritage coast where fabulous views and walks can be found. The Yorkshire Wolfas to the west and north offer diamatic scenery, and walking. The map delow identifies a range of other attractions to visit.

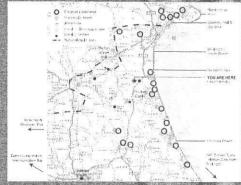
Lissett Alrfield is one of several sites along the aviation heritage trail in the part of Yorkshire.

- Other aviation sites nearby includes:
 The Yorkshire Air Muscum at Elvington
 Eden Camp at Malton
 The underground bunkers at BAF
 Holmpton at Witnernsea



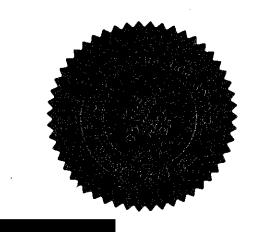


- 1 The Black Bull: Zombies Zephyi





THE COMMON SEAL of EAST RIDING OF YORKSHIRE COUNCIL was hereunto affixed in the presence of:-



PROPERTY-LAW MANAGER

SIGNED as a DEED by JAMES HERBERT TENNANT in the presence of:

Signature:

Name:

DAVID DIXON

Address:

ESSEX HOUSE MANOR STREET

MULL

Occupation: SOLICITOR

Director.

Director/Secretary

EXECUTED as a DEED by Lissett Airfield Wind Farm Limited acting by

Director

Director/Secretary



DATED Pat Oction 2015

EAST RIDING OF YORKSHIRE COUNCIL

- and -

CHRISTOPHER BRANSTON FOSTER

- and -

SUSAN VERENA FOSTER

-and-

RICHARD EDWARD FOSTER

-and-

NATIONAL WESTMINSTER BANK PLC

AGREEMENT

under Section 106 of the Town and Country
Planning Act 1990 (as amended)
in respect of land Elm Tree Farm Main Street Brigham
in the East Riding of Yorkshire

Application Reference: 11/05891/STPLF

THIS AGREEMENT is made the 7th day of October 2015
BETWEEN

- (1) EAST RIDING OF YORKSHIRE COUNCIL ("the Council") and
- (2) CHRISTOPHER BRANSTON FOSTER and SUSAN VERENA FOSTER and RICHARD EDWARD FOSTER all of Elm Tree Farm Main Street Brigham East Riding of Yorkshire YO25 8JW ("the Owners") and
- (3) <u>NATIONAL WESTMINSTER BANK PLC</u> of Sheffield Securities Centre PO Box 502 2nd and 3rd Floors 42 High Street Sheffield S1 2YW ("the Mortgagee")

DEFINITIONS AND INTERPRETATION

IN this Agreement the following words and expressions shall have the following meanings

"the Act"

means the Town and Country Planning Act 1990 as

amended

"the Application"

means the application for planning permission received

by the Council and bearing the reference number

11/05891/STPLF or as the same may have been

amended prior to the date hereof

air defence condition

means the agreed condition by which the Air Defence

Radar mitigation scheme was to be imposed as part of

the conditions for permitting the Application

Air Defence Radar Mitigation

means a detailed scheme to mitigate the adverse impacts

Scheme

of the Development on the air defence radar at RRH

Staxton Wold and the air surveillance and control

operations of the Ministry of Defence. The scheme will

set out the appropriate measures to be implemented to that end

"Commencement of Development"

means the carrying out of a material operation for the commencement of the Development as defined in

section 56(4) of the Act

"the Development"

means the development described in the Application

"the Director"

means the Council's Director Planning and

Regeneration for the time being or his authorised

nominee

"the Land"

means the land situate at Elm Tree Farm Main Street

Brigham East Riding of Yorkshire YO25 8JW and

shown edged * on the plan annexed hereto

"the Plan"

means the plan annexed hereto

"the Planning Permission"

means the Planning Permission for the Development

The Secretary of State

means the Secretary of State for Defence

WHEREAS

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated
- (B) The Owners are seized in fee simple in possession of the Land free from incumbrances save as hereinafter mentioned and proposes to enter into the obligations contained in this Agreement in respect of the Land
- (C) The Mortgagee is mortgagee of the Land under a Legal Charge dated 18

 November 1999 and made between the Owners of the one part and the

 Mortgagee of the other part

- (D) The Owners have submitted the Application to the Council for planning permission to carry out the Development in accordance with plans specifications and particulars forming part of the Application
- (E) The Owners and the Secretary of State agreed the wording of the air defence condition and submitted it to the Council as part of the proposed conditions to be placed on the permission were the Council minded to grant the planning permission
- (F) At its meeting on the 5th April 2012 the Council approved the Application but failed to attach the air defence condition to the permission thereby granted
- (G) The Secretary of State has applied for Judicial Review of the Council's decision on the grounds of the Council's failure to attach the air defence condition to the Planning Permission
- (H) The Secretary of State was granted permission to apply for judicial review on 24th September 2014
- (I) To permit the Secretary of State for Defence to withdraw the issued Judicial Review proceedings Claim No. CO/2779/2014 the Owners have agreed to enter into this Agreement

NOW THIS DEED WITNESSES as follows:-

- 1. This Agreement is made in pursuance of the powers set out in Section 106 of the Act and all other powers enabling and is a planning obligation for the purposes of Section 106 of the Act and the Council is the Planning Authority by which the provisions of this Agreement shall be enforceable
- IT IS HEREBY AGREED AND DECLARED as follows:
 - 2.1 Save where the context otherwise requires references to any party in this

 Agreement shall include their respective successors in title but to the

 intent that no party shall be liable for any breach of this Agreement

- occurring after the date on which they shall have parted with their interest in the Land or the part in respect of which such breach occurs
- 2.2 This Agreement is a local land charge and shall be registered as such
- 2.4 Nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Authority and its rights powers duties and obligations under all public and private statutes bylaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement
- 2.5 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- 2.6 Covenants made hereunder if made by more than one person are made jointly and severally
- 2.7 No waiver (whether express or implied) by the Council of any breach or default by the Owners in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owners
- 2.8 Any Notice or other information required or authorised by this Agreement to be given by any party may be given by hand or sent by first class pre paid post and if sent by post shall be deemed to be served two days after being sent unless returned to the sender as undelivered mail by the Post Office.

- 2.9 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and unless specifically provided no person other than the parties to this Agreement or their successors in title shall have any benefit or any right to enforce any term of this Agreement
- 3. The Owners covenant with the Council so as to bind the Land and each and every part thereof to observe and perform the covenants set out in the Schedule hereto
- 4. The Council agrees to accept the Owners covenants set out in the Schedule hereto
- 5. The Mortgagee hereby consents to the completion of this Agreement and acknowledges that (subject as hereinbefore provided) the Land shall be bound by the restrictions and obligations contained herein
- 6. The Owners hereby covenant to indemnify the Mortgagee in respect of any liabilities actions demands proceedings costs and expenses arising directly or indirectly as a result of the Mortgagee having entered into this Agreement
- 7. Any dispute arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Law Society and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

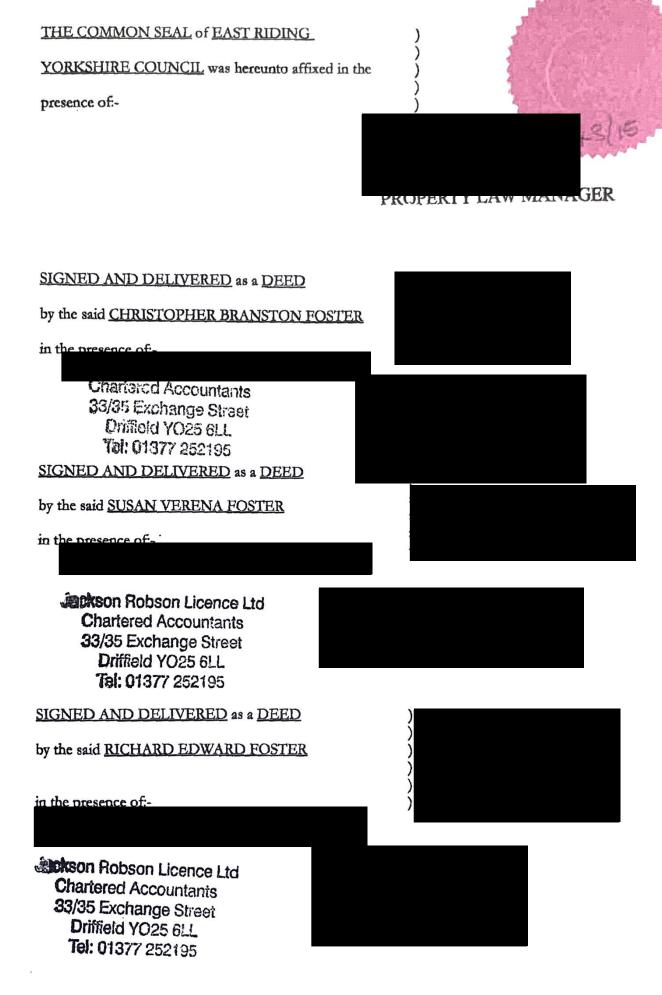
IN WITNESS whereof the parties have executed these presents as a Deed the day and year first before written

SCHEDULE

Covenants by the Owners and Restrictions on the Land

- Within 56 days of service of a written notice ("the Notice") by the Council the
 Owners shall be required to submit an Air Defence Radar Mitigation Scheme
- 2. Following 112 days of the service of the Notice the Development shall not operate or continue to operate unless and until an Air Defence Radar Mitigation Scheme has been submitted to and approved in writing by the Secretary of State and confirmed to the Council
- The turbine shall be permitted to operate unless and until:
- 3.1 there is failure by the Owners to instigate mitigation measures which the approved scheme requires to be implemented; and
- any performance criteria specified in the approved scheme and which the approved scheme requires have not been satisfied; and
- 3.3 that implementation and satisfaction of the performance criteria have not been approved by the Local Planning Authority

 the Owners shall comply with all other obligations so far as it is within his
 - control so to do contained within the Air Defence Radar Mitigation Scheme



EXECUTED as a <u>DEED</u> by)	
NATIONAL WESTMINSTER BANK PLC)	
acting by a director and a service)	
secretary or two directors)	
Director		
Director/Secret		

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