From:	Louise Staples
To:	Hornsea Project Three
Cc:	Jane Kenny
Subject:	NFU and LIG submissions to the hearings from 3rd to 7th December 2018
Date:	14 December 2018 20:11:48
Attachments:	Orsted Open Floor hearing Monday 3rd December NFU LIG Final 14.12. 2018.pdf Orsted specific hearing Friday 7th December NFU LIG final 14.12. 2018.pdf Orsted specific hearing DCO Thursday 6 December NFU LIG 13.12. 2018 final.pdf Orsted specific hearing Tuesday 4 December NFU LIG Final 12.12. 2018.pdf

Dear Kay

Please find attached the written submissions on behalf of the NFU and LIG in regard to the following hearings:

Open floor hearing – Monday 3rd December 2018

Issue Specific Hearing – Alternatives and design flexibility – Tuesday 4th December 2018

Issue Specific Hearing – Draft Development Consent Order – Thursday 6th December 2018

Issue Specific Hearing – Other Onshore Matters – Friday 7th December 2018

Further two documents have been attached which go with the submission in regard to the hearing on Thursday 6th December 2018. The links to these documents have also been inserted in the submissions.

If you do need anything else please do contact me.

Kind regards

Louise

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PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

WRITTEN SUBMISSIONS OF NFU AND LIG REGARDING THE HORNSEA PROJECT THREE OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER 201 [...]

PLANNING INSPECTORATE REFERENCE NO EN010080

SUBMISSIONS OF NATIONAL FARMERS UNION AND THE LAND INTEREST GROUP ON THE ISSUE SPECIFIC HEARING – THE DRAFT DEVELOPMENT CONSENT ORDER ON 6th DECEMBER 2018

DATE 14TH DECEMBER 2018

1.0 Introduction

1.1 Submissions on behalf of the National Farmers Union ("NFU") and the Land Interest Group (LIG) in respect of the application for a Development Consent Order (DCO) by Orsted Hornsea Project three (UK) Limited for the Hornsea project Three Offshore Wind Farm. The NFU is making a case on behalf of its members and LIG its clients, who are affected by the DCO.

1.2 The NFU represents 47,000 farm businesses in England and Wales, and additionally has 40,000 countryside members with an interest in the farming and the country.

2.0 Articles

2.1 **Article 2**: Further clarity is needed for landowners on the definition of "maintain" especially in respect of "remove, reconstruct and replace". The NFU and LIG would like to see the definition changed to include "that not in any circumstances so as to vary from the description of the authorised development in Schedule 1 and in any event not so as to vary the footprint, height or appearance."

2.3 **Article 6: Neighbourhood Planning Act 2017:** The NFU and LIG would like Orsted to agree to not less than three months notice before entering and taking temporary possession of land and not just 14 days notice as highlighted in Article 25 para(2). This would then follow what has been set out in the Neighbourhood Planning Act 2017 Part 2 Section 20. This requires acquiring authorities to give at least three months notice and it also requires the acquiring authority to specify the period for which temporary possession is going to be taken.

2.4 The NFU and LIG believe strongly that all DCOs going forward should fall in line with these changes to compulsory purchase powers under the Neighbourhood Planning Act 2017. Taking land for temporary possession and only giving 14 days notice has become an issue on other infrastructure schemes especially HS2. HS2 already gives 28 days notice before temporary possession can be taken and this lead in time has caused farmers problems. Therefore the NFU has petitioned for three month notices to be included in the Hybrid Bill for Phase 2a. In response to this the Select Committee for Phase 2a in their Second Special Report has instructed HS2 that where possession may be for longer than a week farmers should be given advance warning of the quarter year in which the temporary possession is likely to be taken and notice should be not less than three months prior to that quarter. Further HS2 have also stated that they will give a timeline of how long temporary possession is going to be taken for.

2.5 The NFU and LIG therefore ask the Examining Authority to change the 14 days notice to three months notice at Article 25 para (2).

2.6 **Article 16: Authority to survey and investigate the land onshore**
NFU and LIG would like to see further details included within the notice which is served 14 days on an landowner or occupier of land. The notice should include details of the type of survey to be carried out, who is carrying out the survey and what if any equipment is to be left on the land. This would then follow what has been set out in Chapter 22 of the Housing and Planning Act 2016 which makes provision about rights of entry in relation to compulsory purchase generally and states what the notice must include:
The notice must include details of what is proposed-

- Searching, boring and excavating
- Leaving apparatus on the land
- Taking samples
- An aerial survey
- Carrying out any other activities that may be required.

2.7 **Article 18: Time limit for Compulsory Powers:** The NFU and LIG believe strongly that the time limit to exercise the right to acquire land compulsorily should only be 5 years. Extending the time limit to 7 years allows Orsted an even longer period to carry out the two phases and will not in any way incentivise them to commence the second Phase at the earliest opportunity. As long as Orsted have served temporary notices to take possession and have entered land before the end of the 5 years the undertaker can remain in possession of the land after the end of that period. As stated before it is the duration of time in which Orsted will be in possession of the land to lay the cables which is the biggest issue for the landowners and occupiers due to the disruption to the farming business.

2.8 **Article 25: Temporary Use of Land**: It is considered that further clarity is needed for landowners where this project is likely to be delivered in two phases. This is not clear as it is worded under Article 25.

3.0 Schedule 1: Part 3: Requirements

3.1 **Requirement 6:** NFU and LIG would like to see it stated that there are to be two main phases of construction. The wording 'phases of construction' is to open.

3.2 It was raised at this point in the hearing by NNDC the issue over whether the cables are going to be HVAC or HVDC. The NFU and LIG did state at the hearing on Tuesday 4th December that if the DCO was to granted for both HVAC and HVDC that there should be some kind of condition applied that the cables should be HVDC unless Orsted can prove that there is some technical reason why they have to be laid as HVAC cables.

3.3 NFU and LIG therefore support the wording that was put forward by NNDC in regard to whether the cables are HVAC or HVDC. The drafting was as follows:
"Unless a clear and compelling reason as to why HVDC cables cannot be provided within the overall phase then the method of electrical transmission shall be HVAC. Clear and technology reasons should be given by the developer to the local authority. HVAC then and only permitted". It was also highlighted that there was a preference for local authorities to give approval to this.

3.4 **Requirement 17: Code of Construction Practice**: The NFU and LIG stated that they would like further details to be included in a document linked to the Code of Construction practice such as a "Outline Soil Management Plan" or a "Construction Environmental Management Plan" where details of how soil reinstatement and aftercare, water supplies and field drainage are to be treated. The NFU has previously been involved in the drafting of wording to be included in these documents for the Triton Knoll Electrical System in Lincolnshire (DCO granted 6/9/2016) and the Richborough Connection Project in Kent (DCO granted 3/8/2017).

3.5 The wording for the particular issues which landowners are concerned about were included in an "Outline Soil Management Plan" in the Triton Knoll DCO and in a "Construction Environmental Management Plan" for the Richborough Connection project. The links to both documents have been highlighted below:-

Triton Knoll "Outline Soil Management Plan"
https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020019/EN020019-001455-Appendix%2031%20-%20%20Outline%20Soil%20Management%20Plan%20(Revision%20E).pdf

Richborough CEMP
https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020017/EN020017-002686-National_Grid_5.4.3C(D)_Construction_Environmental_Management_Plan_Apr_17.pdf

3.6 NFU and LIG would also like to see more detail confirmed as to how an Agricultural Liaison Officer (ALO) will be engaged and work. Wording is highlighted blow from the Richborough CEMP in regard to an ALO.

Agricultural Liaison Officer

An Agricultural Liaison Officer (ALO) (or person of similar title) will be employed by the principal contractor to assist in the day to day liaison between the contractor and Persons with Interest in Land (PILs).

The ALO will be responsible for providing PILs with information about the daily construction activities and project programme and reporting any issues to both the main contractor and National Grid Land and Engineering teams. Other duties to be conducted by the ALO include the following:-

- *to be responsible for ensuring that contractors are using the correct access routes and report any deviation from those routes to the National Grid Land officer/Agent;*

- *to report and record any damage that may occur to fences, drainage, gates, trees, buildings etc to the National Grid Land Officer;*

- *to relay any requests from PILs to alter/amend access routes conditions of access to the National Grid Land Officer; and*

- *to attend all project progress meetings.*

Contact details for the ALO will be made available to PILs, who will be contactable throughout the contractors working days and hours. Outside of these times and in the event of emergency, out of hours contact details will be provided.

3.7 Highlighted below is the particular wording on soil reinstatement and aftercare as well as field drainage taken from the Triton Knoll and Richborough documents. The NFU and LIG is expecting Orsted to draft similar wording to be included and linked to the Code of Construction Practice within the DCO.

Triton Knoll Triton Knoll Offshore Wind Farm Ltd Triton Knoll Electrical System

4 Land Drainage

4.1 Existing land drains, where encountered during construction, will be appropriately marked. Temporary drainage will be installed within the cable corridor working width to intercept existing field drains and ditches in order to maintain the integrity of the existing field-drainage system during construction. Such measures will also assist in reducing the potential for wet areas to form during the works, thereby reducing the impact on soil structure and fertility. Where necessary, existing land drains will be replaced during construction to ensure continued agricultural use.

4.2 Particular care will be taken to ensure that the existing land drainage system is not compromised as a result of construction. Land drainage systems will be maintained during construction and reinstated on completion.

4.3 Drainage systems will be reinstated to the Landowner's reasonable satisfaction (and to the reasonable satisfaction of the Occupier, if applicable, and where this does not conflict with the Landowner's reasonable satisfaction), ensuring that the drainage system is put back in a condition that is at least as effective as the previous condition, and that the restoration follows best practice for field drainage installations, and takes into account site specific conditions.

4.4 The landowner will be consulted prior to the installation of the cable ducts, on the design, including layout, falls, pipe sizes, pipe types and outfall, of any land drainage works required during construction, and on the design and timing of any land drainage works required for the subsequent restoration of the land. This process will take due regard of any local knowledge appropriate to individual circumstances.

4.5 The services of a suitably qualified drainage consultant will be employed by the Applicant to act as an drainage expert during the detailed design process, to agree with landowners the pre and post drainage schemes required.

4.6 A dispute resolution process will be established including an Independent Expert for drainage design and implementation appointed jointly. Where agreement cannot be reached on the appointment of the expert the matter will be referred to the president of the institute of Civil Engineers.

4.7 Landowners will be provided with the opportunity to inspect land drainage works as they progress. Records of existing and remedial drainage will be made by the Applicant and copies provided to the Landowner (and the Occupier, if applicable) after installation of the cables.

4.8 During construction all reasonable care will be taken to minimise physical damage to the landowners land and adjacent land resulting from the pumping of water from the construction trenches (if required), in wet conditions. Any water will be pumped into existing and appropriate open drainage/watercourse.

4.9 The location of drains cut or disturbed by the construction works will be photographed, given a unique number and logged using GPRS coordinates.

4.10 The Applicant will compensate the Occupier on a proven loss basis for any damages or losses caused as a direct result of the use of, or access to or from, the Easement Strip, subject to receipt and business approval of a claim submitted in a standard format as requested by the Applicant.

4.11 Where it is reasonable for the reinstatement of drainage to involve works outside of the order limits it will be done subject to the agreement of the landowner.

Richborough CEMP

Land Drainage Consultant

A Land Drainage Consultant (or person of similar title) will be employed by the principal contractor to design a land drainage remediation scheme. The Land Drainage Consultant will be responsible for providing PILs with information and obtaining their views on the land drainage remediation scheme relevant to their land.

Land Drainage

4.4.26 The construction of pylons will take place in fields where according to the drainage plans and landowners knowledge land drains are present. The absence of plans or information from landowner will not be regarded as evidence that land drains do not exist.

4.4.27 Land drains and ditch locations will be identified based on existing land drainage plans and/or identified during the works (in the absence of drainage plans). Land drainage will be installed (either temporary or permanent) to maintain the integrity of the field drainage for the duration of works. Drainage systems however will not be installed into areas where they are not currently present, e.g. environmental wetlands. The actual condition and characteristics (e.g. depth of installation, pipe type and diameter) of the existing drainage will be recorded upon excavation.

4.4.28 Post-construction drainage plans will be created when it has been necessary to repair or install new permanent drainage and will be made available to the land owner and/or Occupier at the conclusion of the works.

4.4.29 Drainage systems (land drains) will generally not be introduced into areas where they are not currently present, e.g. ash meadows. However, underdrainage may need to be installed on land currently supporting arable agriculture, where poor drainage areas resulting from construction is identified.

4.4.30 The construction of access tracks may not require diversion of existing drainage due to the excavations not exceeding 0.5m depth in those areas, but it will be monitored during the construction process.

4.4.31 All land drainage works will be carried out by a Specialist Agricultural Land Drainage Contractor and the installed drainage will be at least as effective as the previous condition of the existing drainage.

4.4.32 Landowners will be consulted during the pre-construction surveys to establish the existing underdrainage within those areas to be disturbed during construction.

4.4.33 Landowners will be informed of the design of drainage works required during construction and following installation of pylons, including: pipe layout, falls, dimensions and outfalls (if required), together with the timing of the land drainage work. This will ensure any local knowledge appropriate to individual circumstances is not missed.

4.4.34 National Grid will maintain liaison with land owners to ensure they are kept informed and offered the opportunity to inspect land drainage works as they progress.
4.4.35 Where it is reasonable for the reinstatement of drainage works to involve work outside of the Order Limits, it will be done subject to the agreement of the landowner.

4.4.36 Consents from the Environment Agency and Internal Drainage Board for outfalls into controlled watercourses may be required and an application will be made as necessary for these outfalls.

Soil and Aftercare Management Plan (SAMP)

4.4.14 Measures to protect soils will be set out in a SAMP prepared by the contractor and will include, but not be restricted to, the following measures:

- *prior to commencement of construction a soil survey (including fertility) to establish baseline conditions will be carried out by a competent person (e.g. a soil scientist) to inform soil handling, storage and reinstatement. Any crop husbandry requirements through to crop harvest will need to be taken into account;*
- *the area required for construction will be defined and provision for ongoing access to crop areas will be agreed with land owners/farmers;*
- *prior to commencement of construction, detailed underdrainage provisions that will be required to maintain drainage from undisturbed areas during construction will be designed (see paragraphs 4.4.33 to 4.4.42 in this CEMP). Any affected water supply and other agricultural supply pipes may also need to be rerouted prior to construction;*
- *during construction and within working areas, weed control would be maintained to minimise the spread of pernicious and/or injurious weeds; the programme would take account of crop management in adjacent fields;*
- *the area within which soil disturbance will occur will be clearly delineated and no trafficking will take place outside it;*
- *construction traffic will be restricted to operating on the designated access roads and not on the unprotected soils;*
- *topsoil stripping will be restricted to the width of the permanent and temporary elements of the proposed development, thereby minimising disturbance to the integrity of the biomass; appropriate geotextile membranes, wooden matting or aluminium trackways will be used over particularly sensitive areas;*
- *in sensitive soil conditions, where the use of geotextile membranes is not appropriate, wheeled vehicles may be fitted with low ground pressure bearing pneumatic tyres to allow a greater distribution of weight;*
- *soil loosening techniques such as deep-tine cultivation and subsoiling will be used where required to break up any compaction which has occurred, for example after removal of temporary track surface before topsoil reinstatement;*
- *subsoil and different superficial deposits will be stored separately to prevent mixing and will be reinstated in reverse order of excavation;*
- *topsoil and subsoil movements will only be undertaken in suitable conditions, for example, when it is not too wet, in accordance with DEFRA guidance (REF 1.8);*
- *soil stabilising methods to reduce the risk of erosion, the creation of leachate and potential water quality issues;*
- *soils will not be stockpiled close to surface water features (refer to Water Environment Section 4.5 for further details). Stockpiled soils will be protected by appropriate measures, for example, permeable membranes, spraying or seeding to reduce the risk of windblown dust, surface water run-off and to reduce the risk of overland migration of silt and sediment to surface waters. Any excavated Made Ground (material that is not natural or agricultural soils) will be stored on an appropriate impermeable surface material and appropriate risk control measures will be implemented (in accordance with Section 2.13 of the CEMP);*
- *following completion of construction and soil replacement, the restored profile would be surveyed to validate, profile depth, soil structure, stoniness and suitability for commercial agriculture;*
- *the SAMP will provide the requirements for rehabilitation of the soils to an equivalent capability for agricultural use to that of the baseline conditions, including aftercare management, drainage and soil nutrient content;*
- *early re-seeding of the reinstated ground will be undertaken to help re-establish and stabilise the structure of the topsoil; and*
- *during aftercare, the maintenance may involve the use of herbicides. Adverse effects on land quality will be avoided by compliance with DEFRA 'Code of Practice for Using Plant Protection Products' (2006). The SAMP will be approved by the relevant planning authority prior to the commencement of any stage of construction works.*

Triton Knoll

Soil Management Plan

Pre-Construction Surveys
2.10 The ALO will ensure that information on existing agricultural management and soil/land conditions is obtained, recorded and verified by way of a detailed preconstruction condition survey.

2.11 A topographic survey will be undertaken where existing surface features exist.

2.12 Soil sampling will be undertaken along the cable route to identify and describe the physical and nutrient characteristics of the existing soil profiles.

2.13 A risk assessment will be undertaken to identify the risk of translocation of soil diseases etc. i.e. arable land soil/blights and appropriate action taken.

2.14 The condition survey will identify for each soil horizon (topsoil, upper subsoil and lower subsoil), the depth, texture, colour, mottling, stone content, consistency and structure. Soils should be described according to the methods and terminology contained in the Soil Survey Field Handbook. Topsoil samples will also be taken for laboratory analysis of pH, organic matter content and major nutrients (phosphorus, potassium, nitrogen and magnesium).

2.15 A drainage survey will be undertaken to establish the exact nature of the as known existing field drainage system and drainage outfalls including any associated farm drainage that may be affected by the scheme. The drainage survey will identify the provision of any temporary drainage requirements and/or diversions as well as confirm the required cable burial depth. The drainage survey will make use of existing drainage patterns to ensure the full implications of the scheme are understood.

2.16 As part of the condition survey the following will also be recorded: □ existing crop regimes; □ the position and condition of field boundaries; □ the condition of existing access arrangements; □ the location of private water supplies (as far as reasonable investigations allow); □ the type of agriculture taking place; □ the yield of crops; □ the quality of grazing land; and □ the existing weed burden.

2.17 Liaison with affected landowners and tenants will be undertaken to identify potential constraints and barriers to construction and identify the provision of any temporary drainage requirements and/or diversions.

2.18 Such aspects will be recorded and entered into a written pre-entry record of condition, which includes photographs and sections dealing with soils and drainage, for each affected landowner. The pre-entry record of condition will be provided to the landowner and occupier prior to entry to the land holding and any identified reasonable omissions will be corrected.

2.19 Information collected during pre-construction surveys will be stored in the Triton Knoll document management system to facilitate ongoing use and access during construction and operation phases. The information stored in the Triton Knoll document management system will be updated when appropriate.

2.20 The commencement of construction will reflect ALO agreements made with affected parties to minimise disruption, where possible, to existing farming regimes and timings of activities (e.g. cropping).

2.21 The ALO will undertake site inspections during construction to monitor working practices and ensure landowners' and farmers' reasonable requirements are fulfilled. The ALO will also be responsible for agreeing reinstatement measures following completion of the works.

2.22 Prior to construction, a thermal resistivity survey will be undertaken along the cable route to determine surface temperature and soil thermal resistivity.

2.23 The findings of the survey will be used by the TKOWFL engineering team to ensure that the soil that will surround the cable has appropriate physical properties. Any areas where alternative fill material may be necessary will be identified at this stage.

2.24 The ALO will be responsible for ensuring that the location, orientation grouping and demarcation of link boxes are informed, subject to overriding constraints, through discussions with the landowner.