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Dear Sirs,

Re: Application by Ørsted Hornsea Project Four Limited for an Order Granting Development Consent for the Hornsea Project Four Offshore Wind Farm – East Suffolk Council’s response to the Applicant’s Deadline 1 submissions - Examination Deadline 2 (Tuesday 29th March 2022).

Lack of Strategic Coordination and ANS Planning Status

East Suffolk Council (ESC) is concerned that measures to address impacts on seabirds, particularly kittiwakes are not being considered strategically, this is of particular concern given the expected quantity of projects coming forward in our coastal areas over the next decade to meet the Government’s ambitions. Requirements for these structures have been imposed on developers in the latter stages of the development consent process with no tangible benefits being offered to local coastal communities set to host them. It is also a concern that project promoters are being told to deliver compensation in the form of Artificial Nesting Structures (ANSs), without taking full account of terrestrial planning considerations in the early stages of site selection, often proposed in an entirely different part of the country to the wind farm project, depending on where kittiwake colonies are located.

Project promoters with a Development Consent Order (DCO) requirement to provide ANSs are deferring details on the location, design and delivery of these structures to a consenting regime outside of the DCO process, either via permission from the Local Planning Authority under the Town and Country Planning Act 1990 (as amended), or via a licence from the Marine Management Organisation (MMO) under the Marine and Coastal Access Act (2009) which raises significant concerns about their deliverability.

The uncoordinated approach to the delivery of ANSs in this region could lead to a significant oversupply of artificial nests which will never be filled by increases in colony sizes. The significant focus on the delivery of increased numbers of kittiwake pairs through the construction of ANSs also ignores other measures that could be implemented to not only help compensate for impacts but additionally help to address local issues which occur.

ESC also has concerns regarding the legal protection which ANSs will require and the potential for this to adversely restrict important developments in this part of East Suffolk. Government guidance on Habitats Regulations derogations (February 2021)¹ states that *“If the area providing compensatory measures is not within the European site, it should become designated as part of the European site. Until that happens, it’s*

¹ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#derogation>

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protected by government planning policy.” Government planning policy on this matter is set out in paragraph 181(c) of the National Planning Policy Framework (NPPF 2021) which advises that sites required as compensatory measures for adverse effects on Habitats Sites (European designated sites) should be given the same protection as the Habitats Sites themselves.

Such legal protection has the potential to restrict future developments in the area, both offshore and onshore. They will also place an additional burden on the Local Planning Authority as competent authority for developments consented under the Town and Country Planning Act 1990 (as amended) when considering and consenting new development in the area. This includes creating additional Habitat Regulations Assessment (HRA) requirements in relation to the policy protection needs for new ANSs. Opportunities for coordination between projects must therefore be fully explored and demonstrated by project promoters to minimise the abundance and need for ANSs to be located on our coastline.

The uncoordinated provision of ANSs to support the delivery of increased kittiwake pairs could result in multiple protected structures which could hinder the timely delivery of new offshore wind farms due to the increased presence of kittiwakes, (which would have to be assessed as if they were part of a population associated with a European designated site) potentially jeopardising projects due to connect by the end of this decade in the lead up to achieving the Government’s offshore wind energy target of 40GW by 2030.

East Suffolk’s Existing Kittiwake Population

The Suffolk coast currently supports the southernmost breeding colonies of kittiwake in the Southern North Sea, these being found at Lowestoft and Sizewell. Nesting at both colonies is associated predominantly with man-made structures (the buildings of the port and town at Lowestoft and the Sizewell A power station offshore rigs) designated as the Sizewell Rigs County Wildlife Site (CWS). Neither Suffolk colony is a feature of a European designated site and there is little or no natural cliff nesting opportunity for kittiwakes on the Suffolk coast due to the geology of the area. Kittiwakes nesting in urban locations such as Lowestoft can and have created considerable conflict with residents, which has led to adverse impacts for both birds and people. This includes issues such as the use of inappropriate deterrents which can harm or kill birds and the creation of considerable amounts of mess which pose risks to human health and wellbeing. ESC would not be able to support proposals for ANSs at locations which would create or exacerbate these issues.

A Large part of the Suffolk coast is also heavily protected for its ecological and landscape value, including a suite of national and international designations such as Special Protection Areas (SPAs); Special Areas of Conservation (SACs); Ramsar Sites and Sites of Special Scientific Interest (SSSIs), along with the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB) and the Suffolk Heritage Coast. We therefore consider that it is highly unlikely that the construction of onshore ANSs will be acceptable in planning terms along much of the coast due to these constraints.

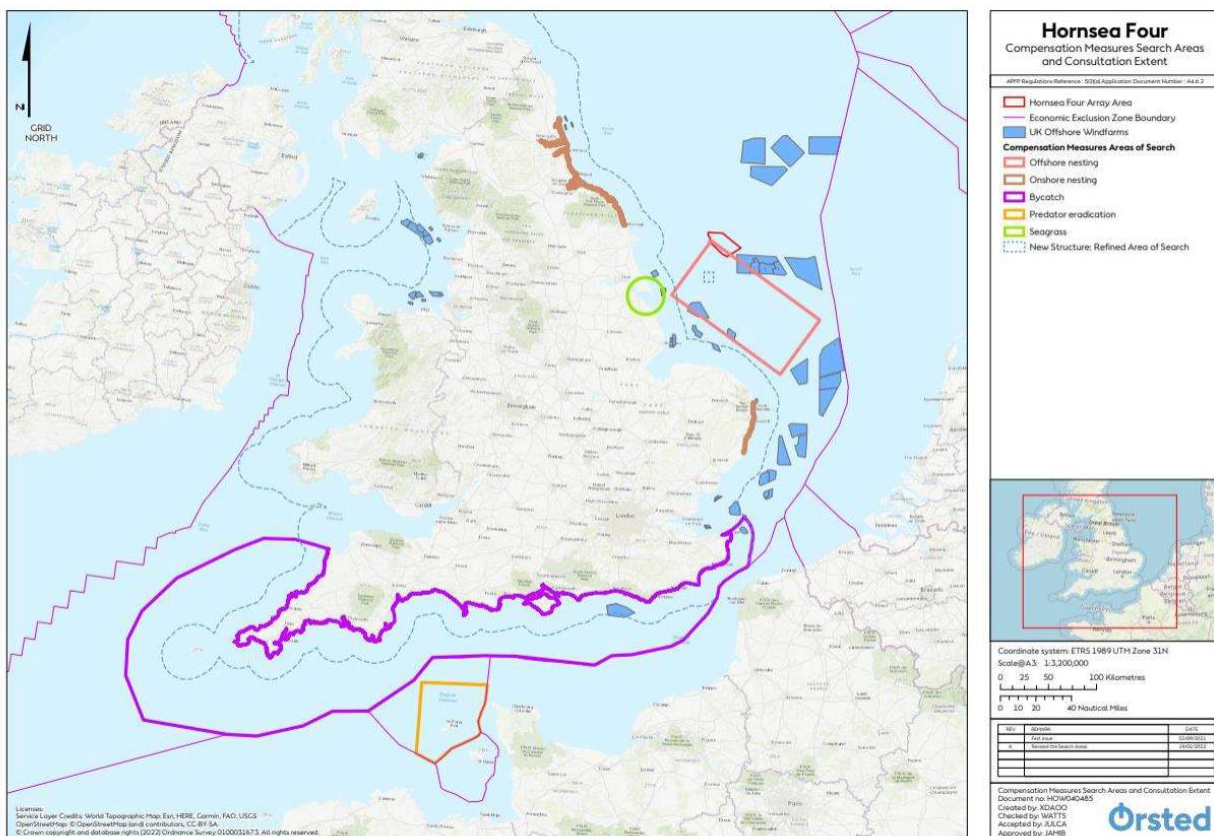
Hornsea Four Kittiwake Compensation

The comments contained in this response are intended to assist the Examining Authority in understanding the procedural and planning constraints which can arise as part of the ANS delivery process. The submission also sets out ESC’s concerns which are intended to help the Applicant avoid the same planning pitfalls experienced with other projects proposing similar compensation in our region. The comments provided should therefore be used by the Applicant in refining and confirming the proposed ANS measures before the end of the examination period.

We have previously engaged with the Applicant as part of the non-statutory targeted consultation on potential compensation measures for seabirds relating to the Hornsea Project Four Offshore Wind Farm (August 2021) where we expressed our significant concerns in relation to the provision of ANSs on the East Suffolk coastline.

ESC has now reviewed the Applicant’s Deadline 1 submission materials focusing on proposed kittiwake compensation measures for potential mortality resulting from wind turbine collisions of birds associated with the Flamborough and Filey Coast SPA. It is noted that following the submission of the application, consideration was given to the Secretary of State’s decision for Norfolk Boreas and the associated Habitats Regulations Assessment (HRA), which follows from the decision made for Hornsea Three. In response it is understood that the Applicant has revisited its conclusion of no potential for Adverse Effect on Integrity (AEoI) (REP1-071 Section 2.1.1.2) in respect of the black-legged kittiwake feature of the Flamborough and Filey Coast SPA from Hornsea Four in-combination with other plans and projects. Section 2.1.1.3 confirms that the Applicant now considers that there is a potential for AEoI on kittiwakes.

It is understood that the Hornsea Four project intends to construct an ANS within one of the search areas indicated in Figure 2 (REP1-071) with the possible offshore nesting structure search area being located off the coast of the Flamborough and Filey Coast SPA in the southern North Sea, and two areas of search for onshore nesting structures, one in East Suffolk, and the other from Clyton Bay to Newbiggin by the Sea in the north east of England.



Source: REP1-071 Figure 2 Updated Compensation Measure Search Areas

ESC supports the Applicant's preference to provide an ANS offshore by repurposing an existing structure and would have significant concerns regarding the siting of a nesting structure within our coastal area. The terrestrial planning constraints associated with an onshore structure can significantly constrain site availability, as in the coastal areas of East Suffolk with its highly designated and visually sensitive landscape. The provision of an ANS onshore or in the nearshore area in East Suffolk would therefore be significantly challenging.

It is important to highlight that ESC has significant concerns regarding the proposed level of Local Authority involvement in the site selection process. It is noted in Section 4.1.1.1 (REP1-016) that stakeholder engagement proposed for offshore ANS following submission of the application and through-out the examination period will include Statutory Nature Conservation Bodies, The Crown Estate, Oil and Gas Operators and Regulators. However, no specific reference is made to the Local Planning Authority. Terrestrial planning considerations are equally important given the potential effects introduced on coastal communities through the introduction of ANS in coastal areas, whether onshore or located in the nearshore environment.

Site selection should not only be informed by ecological factors, but also potential impacts introduced by the ANSs on coastal processes and geomorphology, economic implications for the local economy, environmental considerations, landscape and visual implications and heritage and conservation. The precise location, scale, design and maintenance arrangements for the structures are therefore important considerations alongside the ecological suitability of the sites proposed. Such discussions are more beneficial prior to site selection in order that formal officer feedback can be given due consideration in the early stages of this process.

ESC's planning jurisdiction extends down to the Mean Low Water Spring (MLWS), meaning that any development proposed seawards of this line falls under the Deemed Marine Licence within the jurisdiction of the Marine Management Organisation (MMO). However, where consent for ANS falls under the jurisdiction of the MMO rather than East Suffolk Council as the Local Planning Authority, such structures have the potential to introduce negative planning impacts on the local communities set to host the development. Terrestrial planning constraints must therefore be fully considered for offshore ANS in the same way that they would be for a proposed onshore structure. ESC would also be a key consultee in any application for development consent submitted to the MMO in our coastal waters.

Although it is noted the Applicant is currently pursuing an offshore location, early engagement with the relevant Local Planning Authority remains essential given an onshore option in East Suffolk is also being considered. Recent experience with the Hornsea Three project highlighted that the Local Planning Authority was engaged late in the process regarding the detailed site designs and proposals for ANS compensation after site selection assessment had been significantly progressed close to the point of an application being submitted to the MMO for a Deemed Marine Licence. It was also noted that landowner discussions and ecological suitability had played a significant role in this process prior to formal planning discussions being held with the Council. This did not allow sufficient time for planning and technical officer feedback to be taken into account informing site selection in the early stages. This should not be repeated for the Hornsea Project Four, forming part of the 'lessons learned' process of reflective improvement.

The Applicant has stated that lessons learned through the application process undertaken for the Hornsea Project Three have been incorporated into a proposed framework. Although this approach is strongly supported, based on our interactions with the Hornsea Three project to date, no mention of coordination with Hornsea Project Four has been put forward. The provision of a repurposed offshore structure to

accommodate both projects, if found to be viable, would be supported by ESC. ESC would however have significant concerns if an onshore or nearshore structure was proposed to be provided within the East Suffolk locality. Notwithstanding this position, unless an onshore or nearshore option in East Suffolk is discounted, it is essential that we are engaged in discussions on this matter at the earliest opportunity.

Alternative Kittiwake Compensation Options

As already stated, the preferred option is for the delivery of a repurposed offshore nesting structure in the southern North Sea off the Flamborough and Filey Coast SPA. However, should the preference change to that of an onshore or nearshore structure on the East Suffolk coastline, notwithstanding the significant concerns the Council has raised, it is considered that there may be other measures (beyond those described in the consultation documents) which could be implemented. These measures could be utilised to conserve and enhance the Suffolk kittiwake colonies to help compensate for impacts elsewhere. For example, this could include support for a Suffolk Coast kittiwake project/partnership as well as exploring other beneficial projects which will further help and support the local communities of East Suffolk.

The compensation package could include the creation, implementation, and funding of the project (potentially centred on the main colony in Lowestoft) which not only delivered ANS but also worked on public liaison, engagement with businesses and stakeholders and other physical projects (such as advice on suitable deterrents and cleaning of problem areas) to improve the perception of kittiwakes in the area, along with their population size and condition. We would also be seeking contributions to secure funding for a post(s) to manage, coordinate and report on the kittiwake populations. We consider that this would provide a balanced package of compensation and would be of greater benefit to both kittiwakes and the communities of East Suffolk. Whilst ideally delivery of this should be shared between all relevant offshore wind farm projects to ensure holistic compensation is delivered, Hornsea Four could help to initiate it.

Summary

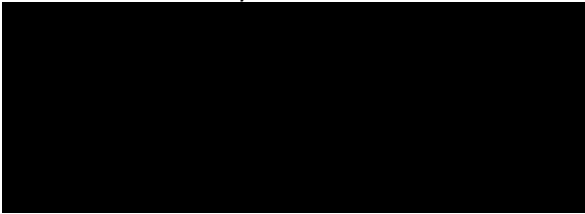
ESC has significant concerns that compensation measures for impacts on seabirds are not being addressed strategically given the expected quantity of projects coming forward in our coastal areas over the next decade. We are also concerned that an uncoordinated approach to ANS delivery in this region would lead to a significant oversupply of artificial nests created which will never be filled by increases in colony sizes. We are also concerned about the legal protection such structures would attract, restricting future onshore and offshore development opportunities coming forwards in our region and the additional burden introduced on the Local Planning Authority.

The Hornsea Project Four has indicated that a repurposed offshore structure is the preferred option for ANS delivery, noting that the area of search for such a structure is located off the coast of the Flamborough and Filey Coast SPA in the southern North Sea. ESC supports this preference in light of the terrestrial planning constraints associated with an onshore location, with such sites being especially constrained in East Suffolk. However, unless the option of an onshore or nearshore structure within our District is removed from consideration, it is important that we are engaged in discussions on this matter at the earliest opportunity.

As stated previously, ESC will raise significant concerns to the siting of ANSs in our coastal areas. If however an offshore structure is not found to be viable, clear justification needs to be provided for any ANSs proposed on the East Suffolk coastline. Notwithstanding the Council's position, if an onshore or nearshore proposal is advocated in East Suffolk, we would need to be satisfied that every opportunity for coordination between

projects has been fully explored and that a tangible package of community benefits has been presented to offset the negative planning impacts raised, otherwise ESC will continue to raise significant concerns to the siting of ANSs in our coastal areas.

Yours sincerely



Philip Ridley | Head of Planning and Coastal Management
East Suffolk Council