

The Crown Estate

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National Infrastructure Planning
The Planning Inspectorate
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13 January 2023

Dear Sirs

Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010

Application by Orsted Hornsea Project Four Limited ("the Applicant") for an Order Granting Development Consent for the Hornsea Four Offshore Wind Farm Order

I write further to the above.

In this letter:

"the book of reference" shall have the meaning given to it in the Order;

"the Commissioners" shall mean the Crown Estate Commissioners;

"Draft DCO" shall mean the Applicant's draft development consent order (reference C1.1, Deadline 7 and dated 10 August 2022); and

"Order" shall mean The Hornsea Four Offshore Wind Farm Order 202[] once made by the Secretary of State.

As you are aware, the Commissioners disagree with any view that section 135(1) of the Planning Act 2008 ("the Act") provides that any provision authorising the acquisition of third party interests in Crown land may only be included in a development consent order if the unconditional consent of the appropriate Crown body to the acquisition is obtained before the development consent order is made.

However, and without prejudice to the Commissioners' position set out in the preceding paragraph, the Commissioners have reached a separate agreement with the Applicant which provides the Commissioners with sufficient assurance as to the way in which compulsory acquisition powers (as contained in Articles 21, 22, 25 and 27 of the Draft DCO) may be exercised in respect of third party interests in Crown land forming part of the Crown Estate. As such, and subject to the below, the Commissioners confirm their consent to the compulsory acquisition of the third party interests in Plots 1-6 for the purpose of section 135(1) of the Act.

The Commissioners' consent is granted subject to:

1. the inclusion and continuing application of the following "Crown rights" wording in the Order at Article 43:

"43.— (1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

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- (a) *belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;*
- (b) *belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or*
- (c) *belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department*

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

and;

2. the Commissioners being consulted further if any variation to the Draft DCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and 135(2) of the Act.

Subject to:

- 1. the inclusion of Article 43 in the Order as referred to above and its continuing application; and
- 2. the Commissioners being consulted further if any variation to the Draft DCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and 135(2) of the Act

the Commissioners confirm their consent to Articles 3, 8-14, 15, 16, 17, 28, 29, 36 and 37 of the Draft DCO, to the extent that they are included in the Order, applying in relation to Plots 1-6 for the purpose of section 135(2) of the Act.

For the avoidance of any doubt, the above consent under s135(2) of the Act does **not** extend to any abrogation or modification of, or any other provisions relating to or affecting, the Interface Agreement (as defined in the Draft DCO) or any other interests in the offshore marine area.

Yours sincerely



Jonathan Treadaway
Senior Legal Counsel
For and on behalf of the Crown Estate Commissioners