National Infrastructure Directorate
The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Orsted Hornsea Project Four Limited
Development Consent Order (DCO) Application for Hornsea Project Four Offshore Windfarm
Application Reference: EN010098

17 April 2023

Response to Request for Information

Our ref. EN010098

Dear Mr Johansson

Please accept this cover letter and supporting documents on behalf of the Applicant, in response to the Request For Information (RFI) letter made available via the Planning Inspectorate website, dated 20 March 2023.

The Applicant

4. The Applicant has provided revised mortality estimates as requested and this is attached as **G12.2: Revised Ornithological Figures**. This document has been shared with Natural England (NE).

5. With regards to securing a Marine Licence from the Marine Management Organisation (MMO), to progress this, the Applicant submitted an EIA screening request to the MMO for a new offshore artificial nesting structure (ANS) on 15th December 2022. The Applicant received a letter (**Appendix A**) from the MMO on 15th March 2023 which stated an EIA Screening Opinion cannot be determined for the construction and operation of the new offshore ANS until the Application has been determined. The letter advises that this will also apply to any screening request submitted prior to DCO decision for the repurposing of the Wenlock platform. The Applicant will therefore have the Marine Licence application(s) prepared and ready to submit subject to a positive DCO decision.

With regards to securing an Area for Lease from The Crown Estate (TCE), the Applicant has received a draft Agreement for Lease and draft Lease from TCE for its consideration. The Applicant has reviewed the documents and remains confident that the Agreement for Lease can be completed as soon as reasonably practicable.

6. With regards to red throated diver and common scoter in the Greater Wash SPA, the Applicant has agreed with NE to include a commitment to adhere to the best practice protocol for red throated diver for the operation and maintenance of Hornsea Four. This commitment is secured in both the **G2.7**

Outline Offshore Operations and Maintenance Plan (tracked and clean versions) and the **F2.15 Outline Cable Specification and Installation Plan** (tracked and clean versions) submitted alongside this letter. The below wording is supported by NE:

Vessel disturbance: using best practice in the management of vessel traffic, a significant disturbance to Red Throated Diver (RTD), can be avoided. The Applicant will have regard to best practice during the construction of Hornsea Four in accordance with this section. Example of relevant best practice include where reasonably practicable:

- avoid works within or within 2km of a Special Protection Area designed for RTD during the over winter period 1st Nov – 31st March inclusive
- selecting routes that avoid known aggregations of birds;
- restricting (to the extent reasonably possible) vessel movements to existing navigation routes (where the densities of divers are typically relatively low);
- maintaining direct transit routes (to minimise transit distances through areas used by divers);
- avoidance of over-revving of engines (to minimise noise disturbance); and,
- briefing of vessel crew on the purpose and implications of these vessel management practices (through, for example, tool-box talks).

7. The Applicant has provided without-prejudice alternative draft DCO Schedule 16 (tracked and clean) versions, presenting the proposed compensation measures for kittiwake, guillemot and razorbill separately. Please see Document **G3.12: Without-prejudice alternative draft DCO Schedule 16** and **G3.12 Without-prejudice alternative draft DCO Schedule 16 (Tracked)**.

8. The Applicant has proposed near-field and far-field monitoring to determine the scale and intensity of wake-related effects at the Flamborough Front from GBS foundations (if used), as set out in Table 3 of the Outline Marine Monitoring Plan. This monitoring was proposed to seek to address Natural England's perceived uncertainty of the assessment of effects of the GBS on the Flamborough Front in the Environmental Statement (ES). Far-field monitoring is triggered if the results of the near field-monitoring confirm turbulent wakes in exceedance of those predicted, and beyond this no adaptive management is required and no trigger levels are therefore proposed. The Applicant is seeking to discuss this matter with Natural England with the aim of reaching agreement on the monitoring proposed and will update the Secretary of State for the deadline of 16 May 2023.

Natural England and RSPB

9. N/A

The Operator of the Wenlock Platform

10. The Applicant has attached a joint statement with Alpha and Energean at **Appendix B** with updated legal advice recognising that the current offshore renewables regulatory regime can adequately support the re-use of an offshore oil and gas platform as an artificial nesting structure. The Applicant acknowledges that the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) will have to approve the amended Statutory Decommissioning Programme to remove the Wenlock Platform and as set out in the updated Repurposing Note at **Appendix B** (in tracked and clean copy from the version submitted into Examination Ref: **REP7-084**), the Applicant has not identified any legal impediment to OPRED being able to provide that approval. The Applicant would however take this opportunity to highlight that the option to repurpose an oil and gas platform is an alternative to the implementation of a new artificial nesting platform. It is currently stated as the preferred option in document **B2.7.2 Compensation measures for Flamborough and Filey Coast (FFC) SPA Kittiwake Offshore Artificial Roadmap (REP7-021)**. The Applicant has made various submissions highlighting the need for a suite of options to include onshore, new and repurposed offshore artificial nesting structures to ensure implementation of the most ecologically and economically viable measure.

There are two clear benefits to retaining the option to repurpose an oil and gas platform. The first is that it is a more sustainable option, ensuring a lower carbon footprint, than sterilising an area of the seabed for a new structure (and impacting the potential for other development in and around that area). The North Sea Transition Authority (NSTA) has recently updated its strategy and now expressly requires owners of oil and gas infrastructure on the United Kingdom Continental Shelf to actively consider re-use options before proceeding with any decommissioning of offshore infrastructure. There has recently been significant focus on the energy transition and the potential re-use of offshore oil and gas infrastructure to accommodate the move towards "net zero" such as the re-use of infrastructure to produce hydrogen and/or for carbon capture and storage purposes. The Applicant recognises the environmental and sustainability benefits of extending the life of an existing, structurally sound, oil and gas platform and would look to apply the current thinking relating to the re-use of infrastructure for hydrogen and carbon capture.

The second benefit is that is a lower cost option compared to the implementation of a new offshore artificial nesting structure. The Applicant has refined the costs as set out in **B2.10Without Prejudice Derogation Funding Statement (REP7-038)** associated with implementing a new or repurposed

structure and determined that there is a significant cost increase between a repurposed structure and a new structure. Cost of implementation should not be underplayed as an important consideration in retaining the option to repurpose an offshore platform within the DCO. The Applicant has learnt lessons from the implementation of nearshore artificial nesting structures as required pursuant to the Hornsea Three Offshore Wind Farm Order 2020, that whilst prioritising the ecological benefit of a particular site is important, the costs of implementation should also be considered. As a side note, cost of implementation is also a key reason to retain the option to implement an onshore artificial nesting structure alongside associated ecological benefits.

A total of 7 documents have been submitted alongside this letter to support the responses to the Request for Information.

Applicant Document Reference	Document Title
G12.2	Revised Ornithological Figures
G3.12	Without-prejudice alternative draft DCO Schedule 16
G3.12	Without-prejudice alternative draft DCO Schedule 16 (Tracked)
G2.7	Outline Offshore Operations and Maintenance Plan
G2.7	Outline Offshore Operations and Maintenance Plan (Tracked)
F2.15	Outline Cable Specification and Installation Plan
F2.15	Outline Cable Specification and Installation Plan (Tracked)

We are grateful for your consideration of the above.

Yours sincerely
Orsted Hornsea Project Four Ltd.

[redacted]

Jamie Baldwin
[redacted]orsted.com

Appendix A

Marine
Management
Organisation

Lancaster House
Hampshire Court
Newcastle upon Tyne
NE4 7YH

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F 0191 376 2681
www.gov.uk/mmo

Felicity Le Page
Lead Environment & Consents Specialist, ORSTED HORNSEA PROJECT FOUR LIMITED
5 HOWICK PLACE
LONDON
SW1P 1WG
Registered No.: 08584182

Case reference: EIA/2022/00051

14th March 2023

Dear Mrs Felicity Le Page,

The Marine Works (Environmental Impact Assessment) Regulations 2007, ("the Regulations")
Request for a screening opinion - Hornsea Four Artificial Nesting Structures

Thank you for your application dated 15 December 2022, requesting a formal screening opinion from the Marine Management Organisation (MMO) in respect to the construction and placement of up to two artificial nesting structures as part of the wider Hornsea Project Four offshore windfarm's compensation measures.

Background

It is our normal procedure to consider such applications in compliance with our obligations under the Regulations.

In considering these Regulations, the MMO must determine whether the works envisaged are a project listed in Schedule A1 (for which an Environmental Impact Assessment (EIA) is mandatory) or a Schedule A2 project within the Directive.

If the works are determined to be a Schedule A2 project, consideration should be given to the nature of the project, having regard to its size, the scope of the works and its location. This will assess the potential for it to have a significant effect on the environment and take account of a range of factors including, the materials to be used; the likelihood that the works could bring about short or longer-term changes to marine environment, natural process or interactions with existing activities; the generation of wastes or release of pollutants and cumulative effects.

MMO Screening Opinion

Following a technical assessment of EIA considerations, the MMO has determined that it is unable to conclude if the project would be considered an EIA application until the

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consent for Hornsea Four has been given. The full explanation can be found in the attached decision letter.

Your feedback

We are committed to providing excellent customer service and continually improving our standards and we would be delighted to know what you thought of the service you have received from us. Please help us by taking a few minutes to complete the following short survey (https://www.surveymonkey.com/r/MMOMLcustomer).

Finally, If you have any queries or require clarification on any of the above, then please do not hesitate to contact me.

Yours sincerely

[redacted]

Gregg Smith
[redacted]
[redacted]marinemanagement.org.uk

Marine Management Organisation

Marine Licensing Team
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NE4 7YH

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Mrs Felicity Le Page
Lead Environment & Consents Specialist, Ørsted Hornsea Project Four Limited.

Our reference: EIA/2022/00051

By Email Only

14 March 2023

Dear Mrs Page,

The Marine Works (MWRs) Environmental Impact Assessment (EIA) (Amendment) Regulations 2017.

Application for an Environmental Screening request for Hornsea Four Artificial Nesting Structures

The Marine Management Organisation (MMO) received the above application on the 15 December 2022. The proposal is for the construction, operation, and maintenance of up to two artificial bird nesting structures (ANS) at offshore locations in the Southern North sea between 55 and 60 kilometres east of Spurn head. These ANS form part of the compensation measures for the Hornsea Four offshore windfarm which is currently awaiting a consent decision from the Secretary of State for Energy Security and Net Zero.

Following a technical assessment of EIA considerations, the MMO has determined that it is unable to conclude if the project would be considered an EIA application.

To complete an EIA screening the MMO must confirm that the project would fall under any project listed under Schedule A1 of the MWRs or if it meets the criteria set out in Schedule A2. The MMO would look to screen the project under Paragraph 89 of Schedule A2 of the MWR which is for:

Any change to or extension of development of a description listed in paragraphs 1 to 87 of this Schedule where that development is already authorised, executed or in the process of being executed.

However, as Hornsea Four is still waiting for consent from the Secretary of State the ANS can not be screened against this as the development requires authorisation first.

The MMO therefore has rejected this EIA request until such time as the consent for Hornsea Four has been given, the request should then be resubmitted to allow the MMO to screen it.

This will also apply to any screening request submitted prior to DCO consent for the repurposing of the Wenlock platform.

Your feedback

We are committed to providing excellent customer service and continually improving our standards and we would be delighted to know what you thought of the service you have received from us. Please help us by taking a few minutes to complete the following short survey [redacted]If you require any further information, please do not hesitate to contact me using the details provided below.

[redacted]

Gregg Smith
Marine Licencing Case Officer

D [redacted]
E [redacted]marinemanagement.org.uk

Appendix B

Hornsea 4

Ørsted

National Infrastructure Directorate
The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

17 April 2023

Orsted Hornsea Project Four Limited
Development Consent Order (DCO) Application for Hornsea Project Four Offshore Windfarm
Application Reference: EN010098

Response to Request for Information

Joint Statement between the Applicant and Energean UK Limited and Alpha Petroleum Resources Limited

The Applicant's Platform Repurposing: Transfer of Regulation document has been shared with the owners and operator of the Wenlock Platform and they have received legal advice that largely concurs and, in some important respects, further strengthens the arguments put forward by Pinsent Masons in that document. The document has been updated to capture this advice and is attached to this joint statement as updated on 13th April 2023 (Repurposing Note). For the avoidance of doubt, the owners and operator of the Wenlock Platform support the view that the regulation of the platform, including decommissioning liabilities, could be transferred from the oil and gas regime to the offshore wind regime on the basis set out in the Repurposing Note, with some input from relevant Government departments including OPRED.

OPRED have confirmed that they have "a number of regulatory, policy and operational concerns with the proposals to re-purpose the Wenlock platform as a nesting bird site" The Repurposing Note clearly sets out the regulatory position and should give the SoS sufficient confidence to retain repurposing as an option available to the Applicant. OPRED have not finalised their position and the Repurposing Note will be shared with OPRED as part of Alpha, Energean and the Applicant's continued discussions with OPRED.

Signed for and on behalf of the Applicant:

[redacted]

James Baldwin (Apr 17, 2023 16:10 GMT+1)

Jamie Baldwin (Development Project Director)

Signed for and on behalf of Alpha Petroleum Resources Limited in its capacity as Wenlock operator acting on behalf of itself and Energean UK Limited as the Wenlock owners

[redacted]

Paul Tanner (Apr 17, 2023 16:00 GMT+1)

Paul Tanner (General Counsel and Commercial Director)

Pinsent Masons

1. INTRODUCTION AND OVERVIEW

1.1 Orsted Hornsea Project Four Limited (**Orsted**) is developing the Hornsea Project Four Offshore Wind Farm (**Hornsea Four**) which will be located off the coast of the East Riding of Yorkshire in the southern North Sea. Hornsea Four will comprise an offshore wind generating station (turbines and array cables), plus offshore and onshore transmission infrastructure.

1.2 As part of the development consent order (**DCO**) application for Hornsea Four, Orsted is proposing the repurposing of an existing oil and gas platform[1] to provide an artificial nest structure to compensate for potential impacts from Hornsea Four on kittiwake.

1.3 This note considers whether the regulation of the platform, including decommissioning liabilities, could be transferred from the oil and gas regime to the offshore wind regime. It concludes that, with some input from the relevant Government departments, this would be possible.

Summary

1.3.1 Works for repurposing could be regulated via the marine licensing regime under the Marine and Coastal Access Act 2009 (**2009 Act**), as with works required for any new structure (i.e. not repurposed).

1.3.2 The platform could fall within the definition of "renewable energy installation" for the purposes of the Energy Act 2004 (**2004 Act**) and therefore its provisions regulating decommissioning could apply.

1.3.3 The marine licence could be conditioned to require decommissioning, with or without reference to the decommissioning programme under the 2004 Act.

1.3.4 To effect the transfer, certain steps would require to be undertaken in respect of the platform under (1) the oil and gas decommissioning regime and (2) the offshore wind regime, however, we believe it is possible to interpret the current legislative frame-work to give effect to that:

(a) Approval by the Offshore Petroleum Regulator for Environment and Decommissioning ("**OPRED**") to an amendment to any approved Statutory Decommissioning Programme to remove the platform from that Statutory Decommissioning Programme;

(b) Issuance by OPRED of amended s.29 notices to remove the platform from the list of assets covered by the notices;

(c) Sale of the platform to Orsted; and

(d) As a condition to that sale, confirmation would be required that the use (including modifications) and decommissioning of the platform would, from completion of the sale, be governed by the marine licensing / Energy Act 2004 regime (including with regards to the provision of security for decommissioning costs).

1.3.5 A derogation from OSPAR Decision 98/3 (the "**Decision**") would not be required as Orsted is not seeking to retain the platform in situ in perpetuity.

1.3.6 These steps are explored in more detail in the sections below.

[1] The term "platform" is used in this note to refer to the fixed platform (NUI) comprising the topsides module (including the helicopter pad) and the 4 leg jacket. Other elements of the Wenlock infrastructure will be decommissioned by the current owners under the oil and gas regime. The exact schedule of infrastructure to be transferred and repurposed is the subject of commercial negotiations between the parties. It does not affect the analysis in this note.
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2. REGULATION OF REPURPOSED ASSET VIA THE OFFSHORE WIND REGIME

Requirement for a marine licence

2.1 The marine management organisation (**MMO**) is the competent authority to grant marine licences pursuant to the 2009 Act.

2.2 A marine licence is required to carry out licensable marine activities in the UK marine licensing area (which includes the Exclusive Economic Zone). Marine licensable activities (s66) include:

"To construct, alter or improve any works within the UK marine licensing area either: (a) in or over the sea, or (b) on or under the sea bed."

2.3 It could therefore be competent for the MMO to grant a marine licence to allow works to be carried out for repurposing, and subsequent maintenance.

2.4 We do not consider s77(1) of the 2009 Act (which disapplies the marine licensing regime in certain circumstances to oil and gas activities) to necessarily preclude the application of the marine licensing regime as:

2.4.1 The works will not be done in the course of carrying out an activity which is licensed under the Petroleum Act 1998 (the "**Petroleum Act**") and so s77(1)(a) does not apply;

2.4.2 It is possible to interpret s77(1)(c) of the 2009 Act and s44 of the Petroleum Act together so that the works are not regarded as "for the purpose of establishing or maintaining an offshore installation" within the meaning of Part 4 of the Petroleum Act and so s77(1)(c) would not apply;

2.4.3 S77(1)(b) and (d) are not relevant as they relate to pipelines and gas/carbon storage.

2.5 Expanding on the point at 2.4.2 above, s77(1)(c) of the 2009 Act states that the marine licensing regime does not apply to:

"anything done for the purpose of establishing or maintaining an offshore installation (within the meaning of Part 4 of the Petroleum Act 1998 […])."

2.6 An "offshore installation" is defined in s44 of the Petroleum Act. S44(1) of the Petroleum Act states that:

"In this Part of this Act, "offshore installation" means any installation which is or has been maintained, or is intended to be established, for the carrying on of any activity to which subsection (2) applies."

2.7 S44(2) applies to any activity mentioned in s44(3) of the Petroleum Act which:

"is carried on from, by means of or on an installation which is maintained in the water, or on the foreshore or other land intermittently covered with water, and is not connected with dry land by a permanent structure providing access at all times and for all purposes."

2.8 The relevant activity referred to in s44(3)(a) of the Petroleum Act is:

"[t]he exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of relevant waters".

2.9 The platform, in its current state, fits the definition of an "offshore installation". It is an installation that is or has been maintained in the water, for the exploitation of mineral resources. However, s44(6) of the Petroleum Act states that:

"The fact that an installation has been maintained for the carrying on of an activity falling within subsection (3) shall be disregarded for the purposes of this section if, since it was so maintained, the installation […] has been maintained for the carrying on of an activity not falling within that subsection."

2.10 It is this section on which Orsted relies to conclude that the platform does not fall within the definition of an "offshore installation" and therefore the marine licensing regime applies. This is because the adaption of the platform to provide an artificial nesting structure would be deemed an activity not falling within s44(3) of the Petroleum Act. All economic activity at the platform relating to gas extraction will have ceased before such adaption.

2.11 If a marine licence is granted, the MMO could attach conditions to the licence to regulate and require decommissioning. S71(3)(d) and (e) of the 2009 Act provide that marine licence conditions can include conditions:

"(d) for the removal, at the end of a specified period, of any object or works to which the licence relates;

(e) for the carrying out, at the end of a specified period, of such works as may be specified for the remediation of the site or of any object or works to which the licence relates"

2.12 The MMO would also have the power to require security for decommissioning costs as a condition of the marine licence via the broad scope of its broad "incidental powers" as provided for in s31 of the 2009 Act:

"(1) The MMO may do anything which appears to it to be incidental or conducive to the carrying out of its functions or the achievement of its general objective.

(2) In particular, the MMO may—
(a) enter into agreements;
(b) acquire or dispose of land or other property;
(c) subject to the restrictions imposed by sections 33 and 34, borrow money;
(d) subject to the approval of the Secretary of State, form bodies corporate or acquire or dispose of interests in bodies corporate;
(e) accept gifts;
(f) invest money"

2.13 As such, there is a functioning regime which could regulate works to and maintenance of the platform following its transfer to Orsted, provided that a clear delineation between the platform's gas exploitation activities and subsequent adaptation to an artificial nesting structure is shown. Orsted can confirm that the owners of the platform intend to plug and abandon the three production wells at the platform's gas field and to remove hydrocarbons and all contaminants from the platform prior to transferring it to Orsted, which demonstrates that the platform is no longer being maintained for the exploitation of mineral resources.

Energy Act 2004 regime

2.14 The decommissioning of the platform could also fall within the 2004 Act regime, which will regulate the decommissioning of the Hornsea Four wind farm structures (e.g. turbines). This interpretation concerns whether the platform meets the definition of "renewable energy installation" under s104 of the 2004 Act. S104(3)(a) of the 2004 Act is the most relevant and defines this as:

2.15 *"[a]n offshore installation used for purposes connected with the production of energy from water or winds."*

2.16 An "offshore installation" is defined in the 2004 Act as:

2.17 *"[a]n installation which is situated in waters where (a) it permanently rests on, or is permanently attached to, the bed of the waters; and (b) it is not connected with dry land by a permanent structure providing access at all times for all purposes."*

2.18 Whilst it is clear that the platform meets the definition of an "offshore installation", the test for the application of the 2004 Act regime hinges upon whether the platform is "*used for purposes connected with the production of energy from water or winds*".

2.19 The 2004 Act sets out a non-exhaustive list of purposes in relation to the above, the most relevant of which is set out at s104(5)(a) of the 2004 Act as "*the transmission, distribution and supply of electricity generated using water or winds"*.

2.20 A key criterion for the platform to fall within the definition of "renewable energy installation" is that the installation is, was or is to be used for purposes connected with the production of energy from water or winds. It is notable that the list of "purposes" in s104(5) is not exhaustive.

2.21 Whilst the platform in its current form does not meet this criterion, if granted, it is anticipated that the Hornsea Four DCO will include a condition which will prevent operation of the Hornsea Four wind turbines (and thus the production of energy from winds) until an artificial nest structure has been constructed/repurposed.

2.22 As such, the artificial nest structure can reasonably be said to be "for a purpose connected with the production of energy from…winds" and therefore to fall within the definition of a renewable energy installation and satisfy the criterion above. This is particularly because the list of purposes set out in the 2004 Act is non-exhaustive and therefore could include purposes indirectly connected with the production of offshore wind, such as mitigation or compensation measures.

2.23 As above at paragraph 2.13, this regime will apply once it is shown that the platform's gas exploitation activities have ceased, and that it has been converted into an artificial nesting structure. The former can be demonstrated by the cessation of gas exploitation at the platform prior to its transfer to Orsted, along with the plugging and abandonment of the three production wells and the removal of on board hydrocarbons and other hazardous materials from the platform, whilst the latter is a question of fact.

2.24 The well-established provisions of Chapter 3 of the Energy Act 2004 would therefore apply to regulate the asset's decommissioning, as it would with the other Hornsea Four infrastructure. Orsted would inform the Secretary of State that it has become responsible for the platform pursuant to s112 of the Act. The Secretary of State could therefore require a decommissioning programme for the platform to be submitted, and security to be provided to secure compliance with the programme and its conditions (s105 and s106(4)). The security can be in the form of a deposit of money, performance bond or guarantee or letter of credit (amongst others) (s114(2)).

2.25 In those circumstances, a marine licence would still be required to carry out licensable activities to repurpose the structure, and we would expect a standard condition attached to the licence as follows:

> *"This licence remains in force until the authorised project has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing."*

2.26 This form of condition or similar is commonplace in marine licences regulated by the MMO.

3. TRANSFER OF DECOMMISSIONING LIABILITIES FROM O&G REGIME

Key Steps

3.1 We believe that the following steps would be required in order to effect the transfer of the platform's decommissioning liability to Orsted (and regulation of the same under the Marine Licensing and

Energy Act regimes). Some or all of these steps could potentially be set out as conditions in the sale and purchase agreement for the sale of the platform to Orsted:

3.1.1 Approval by OPRED to an amendment to any approved Statutory Decommissioning Programme to remove the platform from that Statutory Decommissioning Programme (with possibly a statement within that amended Statutory Decommissioning Programme that the platform is to be re-purposed for use in Hornsea Four);

3.1.2 Issuance by OPRED of amended s.29 notices to remove the platform from the list of assets covered by the notices;

3.1.3 Issuing of the marine licence to apply to the platform by the MMO – we would anticipate that this licence would attach the standard condition as to decommissioning noted at para 2.25 above; and

3.1.4 The platform being considered a "renewable energy installation" for the purposes of the 2004 Act, and liable to the provision of a decommissioning programme and security to the Secretary of State on request (as with the other wind farm structures e.g. turbines).

3.2 We do not believe that it would be necessary (or desirable) to transfer the relevant petroleum licences to Orsted in order to effect a transfer of the platform. We understand that the petroleum licences would be relinquished.

Removal of application of the Petroleum Act

3.3 Once the platform is no longer used for the purposes falling within s30(1)(d) of the Petroleum Act, the Petroleum Act requirement to decommission will no longer apply. This is because s30(1(d) of the Petroleum Act is only relevant if the same definition of "offshore installation", as set out in s44 of the Petroleum Act at paragraph 2.6 above, is satisfied. As explained at paragraph 2.10 above, the platform does not fall within the definition of an "offshore installation" and therefore the decommissioning of the platform will be regulated by the Marine Licensing / Energy Act regime once it changes use. As noted above, OPRED may obtain some additional comfort due to the fact that Orsted could be required to provide the Secretary of State and/or the MMO with decommissioning security – we understand from Orsted that on other projects Orsted has provided this security via a guarantee.

3.4 As OPRED can take comfort from paragraph 3.3 above, this would provide Orsted (and any other developers who may also wish to repurpose oil and gas infrastructure in this way) with clarity that the only decommissioning regime that applies in practice to the repurposed infrastructure is the Marine Licensing / Energy Act regime, with Orsted not required to submit a costed decommissioning programme for the platform to OPRED.

3.5 For completeness, it should be noted that a derogation under the Decision is only relevant if Orsted is seeking to have the platform retained in situ in perpetuity. That is not the case and is evidenced by the fact that:

3.5.1 partial decommissioning works will already have been carried out, including the plugging and abandonment of wells, and making the platform hydrocarbon-free in accordance with the approved decommissioning programme; and

3.5.2 the Decision relates to the disposal of disused offshore installations. The Decision states (at paragraph 2) that "*The dumping, and the leaving wholly or partly in place, of disused offshore installations within the maritime area is prohibited*." The Decision defines "disused offshore installation" as "*an offshore installation, which is neither (a) serving the purpose of offshore activities for which it was originally placed within the maritime area, nor (b) serving another legitimate purpose in the maritime area authorised or regulated by the competent authority of the relevant Contracting Party*". Once converted to an artificial nesting structure, the platform will no longer serve the purpose for which it was placed into the sea. However, its use as an artificial nesting structure arguably serves a "legitimate purpose" in providing

a nesting area for black-legged kittiwake, which can be regulated under the marine licensing regime. Therefore, the platform is not a "disused offshore installation" and does not fall within the remit of the Decision.

3.6 Therefore, a derogation under the Decision is not relevant to the transfer, ongoing regulation or decommissioning of the platform. It is likely that the Hornsea Four DCO will permit Orsted to remove the platform with the consent of the Secretary of State, subject also to receiving necessary consents to authorise the removal works. Under the existing oil and gas regulatory framework the platform could only be decommissioned with the consent of the Secretary of State, and so there would be no substantive change. Given that the repurposing works described in this note have not been applied for as part of the Hornsea Four DCO, further analysis of the DCO regime under the Planning Act 2008 has not been included in this note. The provision of an artificial nest structure is however likely to be required by the DCO, and it is noted that the latest draft in Examination of the Hornsea Four application included the following draft requirement at paragraph 7 of Part 1 of Schedule 16:

"The artificial nesting structure must not be decommissioned without prior written approval of the Secretary of State in consultation with relevant statutory nature conservation body."

20 April 2022 as updated on 6 May 2022, and 13 April 2023

Pinsent Masons LLP

Hornsea Four Platform Repurposing – Transfer of Regulation

1. INTRODUCTION AND OVERVIEW

1.1 Orsted Hornsea Project Four Limited (**Orsted**) is developing the Hornsea Project Four Offshore Wind Farm (**Hornsea Four**) which will be located off the coast of the East Riding of Yorkshire in the southern North Sea. Hornsea Four will comprise an offshore wind generating station (turbines and array cables), plus offshore and onshore transmission infrastructure.

1.2 As part of the development consent order (**DCO**) application for Hornsea Four, Orsted is proposing the repurposing of an existing oil and gas ~~jacket~~ platform[1] to provide an artificial nest structure to compensate for potential impacts from Hornsea Four on kittiwake.

1.3 This note considers whether the regulation of the ~~jacket~~platform, including decommissioning liabilities, could be transferred from the oil and gas regime to the offshore wind regime. It concludes that, with some input from the relevant Government departments, this would be possible.

Summary

1.3.1 Works for repurposing could be regulated via the marine licensing regime under the Marine and Coastal Access Act 2009 (**2009 Act**), as with works required for any new structure (i.e. not repurposed).

1.3.2 The ~~jacket~~ platform could fall within the definition of "renewable energy installation" for the purposes of the Energy Act 2004 (**2004 Act**) and therefore its provisions regulating decommissioning could apply.

1.3.3 The marine licence could be conditioned to require decommissioning, with or without reference to the decommissioning programme under the 2004 Act.

1.3.4 To effect the transfer, certain steps would require to be undertaken in respect of the ~~jacket~~ platform under (1) the oil and gas decommissioning regime and (2) the offshore wind regime, however, we believe it is possible to interpret the current legislative frame-work to give effect to that:

(a) Approval by the Offshore Petroleum Regulator for Environment and Decommissioning ("**OPRED**") to an amendment to any approved Statutory Decommissioning Programme to remove the ~~jacket~~ platform from that Statutory Decommissioning Programme;

~~(b) Amendment of the existing S.29 Notices issued under the Petroleum Act 1998 on the current licencees to disapply those notices in respect of the jacket (this may not be required if the Statutory Decommissioning Programme has already been approved, in which case all stakeholders may agree that its amendment only is sufficient – to be explored further);~~

(b) Issuance by OPRED of amended s.29 notices to remove the platform from the list of assets covered by the notices;

(c) Sale of the ~~jacket~~ platform to Orsted; and

(d) As a condition to that sale, confirmation would be required that the use (including modifications) and decommissioning of the ~~jacket~~ platform would, from completion of the sale, be governed by the marine licensing / Energy Act 2004

[1] The term "platform" is used in this note to refer to the fixed platform (NUI) comprising the topsides module (including the helicopter pad) and the 4 leg jacket. Other elements of the Wenlock infrastructure will be decommissioned by the current owners under the oil and gas regime. The exact schedule of infrastructure to be transferred and repurposed is the subject of commercial negotiations between the parties. It does not affect the analysis in this note.

regime (including with regards to the provision of security for decommissioning costs).

1.3.5 A derogation from OSPAR Decision 98/3 (the "**Decision**") would not be required as Orsted is not seeking to retain the ~~jacket~~ platform in situ in perpetuity.

1.3.6 These steps are explored in more detail in the sections below.

2. REGULATION OF REPURPOSED ASSET VIA THE OFFSHORE WIND REGIME

Requirement for a marine licence

2.1 The marine management organisation (**MMO**) is the competent authority to grant marine licences pursuant to the 2009 Act.

2.2 A marine licence is required to carry out licensable marine activities in the UK marine licensing area (which includes the Exclusive Economic Zone). Marine licensable activities (s66) include:

"To construct, alter or improve any works within the UK marine licensing area either: (a) in or over the sea, or (b) on or under the sea bed."

2.3 It could therefore be competent for the MMO to grant a marine licence to allow works to be carried out for repurposing, and subsequent maintenance.

2.4 We do not consider s77(1) of the 2009 Act (which ~~disapply~~ disapplies the marine licensing regime in certain circumstances to oil and gas activities) to necessarily preclude the application of the marine licensing regime as:

2.4.1 The works will not be done in the course of carrying out an activity which is licensed under the Petroleum Act 1998 (the "**Petroleum Act**") and so s77(1)(a) does not apply;

2.4.2 It is possible to interpret s77(1)(c) of the 2009 Act and s44 of the Petroleum Act ~~1998~~ together so that the works are not regarded as "for the purpose of establishing or maintaining an offshore installation" within the meaning of Part 4 of the Petroleum Act ~~1998~~ and so s77(1)(c) would not apply;

2.4.3 S77(1)(b) and (d) are not relevant as they relate to pipelines and gas/carbon storage.

2.5 Expanding on the point at 2.4.2 above, s77(1)(c) of the 2009 Act states that the marine licensing regime does not apply to:

"anything done for the purpose of establishing or maintaining an offshore installation (within the meaning of Part 4 of the Petroleum Act 1998 […])."

2.6 An "offshore installation" is defined in s44 of the Petroleum Act. S44(1) of the Petroleum Act states that:

"In this Part of this Act, "offshore installation" means any installation which is or has been maintained, or is intended to be established, for the carrying on of any activity to which subsection (2) applies."

2.7 S44(2) applies to any activity mentioned in s44(3) of the Petroleum Act which:

"is carried on from, by means of or on an installation which is maintained in the water, or on the foreshore or other land intermittently covered with water, and is not connected with dry land by a permanent structure providing access at all times and for all purposes."

2.8 The relevant activity referred to in s44(3)(a) of the Petroleum Act is:

"[t]he exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of relevant waters".

2.9 The platform, in its current state, fits the definition of an "offshore installation". It is an installation that is or has been maintained in the water, for the exploitation of mineral resources. However, s44(6) of the Petroleum Act states that:

"The fact that an installation has been maintained for the carrying on of an activity falling within subsection (3) shall be disregarded for the purposes of this section if, since it was so maintained, the installation […] has been maintained for the carrying on of an activity not falling within that subsection."

2.10 It is this section on which Orsted relies to conclude that the platform does not fall within the definition of an "offshore installation" and therefore the marine licensing regime applies. This is because the adaption of the platform to provide an artificial nesting structure would be deemed an activity not falling within s44(3) of the Petroleum Act. All economic activity at the platform relating to gas extraction will have ceased before such adaption.

2.11 ~~2.5~~If a marine licence is granted, the MMO could attach conditions to the licence to regulate and require decommissioning. S71(3)(d) and (e) of the 2009 Act provide that marine licence conditions can include conditions:

"(d) for the removal, at the end of a specified period, of any object or works to which the licence relates;

(e) for the carrying out, at the end of a specified period, of such works as may be specified for the remediation of the site or of any object or works to which the licence relates"

2.12 ~~2.6~~The MMO would also have the power to require security for decommissioning costs as a condition of the marine licence via the broad scope of its broad "incidental powers" as provided for in s31 of the 2009 Act:

"(1) The MMO may do anything which appears to it to be incidental or conducive to the carrying out of its functions or the achievement of its general objective.

(2) In particular, the MMO may—
(a) enter into agreements;
(b) acquire or dispose of land or other property;
(c) subject to the restrictions imposed by sections 33 and 34, borrow money;
(d) subject to the approval of the Secretary of State, form bodies corporate or acquire or dispose of interests in bodies corporate;
(e) accept gifts;
(f) invest money"

2.13 ~~2.7~~As such, there is a functioning regime which could regulate works to and maintenance of the ~~jacket~~ platform following its transfer to Orsted, provided that a clear delineation between the platform's gas exploitation activities and subsequent adaptation to an artificial nesting structure is shown. Orsted can confirm that the owners of the platform intend to plug and abandon the three production wells at the platform's gas field and to remove hydrocarbons and all contaminants from the platform prior to transferring it to Orsted, which demonstrates that the platform is no longer being maintained for the exploitation of mineral resources.

Energy Act 2004 regime

2.14 ~~2.8~~The decommissioning of the ~~jacket~~ platform could also fall within the 2004 Act regime, which will regulate the decommissioning of the Hornsea Four wind farm structures (e.g. turbines). This interpretation concerns whether the platform meets the definition of "renewable energy installation" under s104 of the 2004 Act. S104(3)(a) of the 2004 Act is the most relevant and defines this as:

2.9 Section 105(2) of the 2004 Act permits the Secretary of State to require by notice the submission of a decommissioning programme for a "relevant object".

2.10 A "relevant object" means the whole or part of (a) a renewable energy installation; or (b) an electric line that is or has been a related line (s105(10)).

2.11 "Renewable energy installation" includes (s104):

2.15 "an "[a]n offshore installation used for purposes connected with the production of energy from water or winds"."

2.16 An "offshore installation" is defined in the 2004 Act as:

…

(5) The purposes referred to in subsection (3)(a) include, in particular –

2.17 "[a]n installation which is situated in waters where (a) it permanently rests on, or is permanently attached to, the bed of the waters; and (b) it is not connected with dry land by a permanent structure providing access at all times for all purposes."

2.18 Whilst it is clear that the platform meets the definition of an "offshore installation", the test for the application of the 2004 Act regime hinges upon whether the platform is "*used for purposes connected with the production of energy from water or winds*".

2.19 (a) The 2004 Act sets out a non-exhaustive list of purposes in relation to the above, the most relevant of which is set out at s104(5)(a) of the 2004 Act as "*the transmission, distribution and supply of electricity generated using water or winds*; and".

(b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the generation of electricity in that manner is, in a particular case, practicable or commercially viable, or both

2.20 2.12A key criterion for the jacket platform to fall within the definition of "renewable energy installation" is that the installation is, was or is to be used for purposes connected with the production of energy from water or winds. It is notable that the list of "purposes" in s104(5) is not exhaustive.

2.21 2.13If Whilst the platform in its current form does not meet this criterion, if granted, it is anticipated that the Hornsea Four DCO will include a condition which will prevent operation of the Hornsea Four wind turbines (and thus the production of energy from winds) until an artificial nest structure has been constructed/repurposed.

2.22 2.14As such, the artificial nest structure can reasonably be said to be "for a purpose connected with the production of energy from…winds" and therefore to fall within the definition of a renewable energy installation and satisfy the criterion above. This is particularly because the list of purposes set out in the 2004 Act is non-exhaustive and therefore could include purposes indirectly connected with the production of offshore wind, such as mitigation or compensation measures.

2.23 As above at paragraph 2.13, this regime will apply once it is shown that the platform's gas exploitation activities have ceased, and that it has been converted into an artificial nesting structure. The former can be demonstrated by the cessation of gas exploitation at the platform prior to its transfer to Orsted, along with the plugging and abandonment of the three production wells and the removal of on board hydrocarbons and other hazardous materials from the platform, whilst the latter is a question of fact.

2.24 2.15The well-established provisions of Chapter 3 of the Energy Act 2004 would therefore apply to regulate the asset's decommissioning, as it would with the other Hornsea Four infrastructure. Orsted would inform the Secretary of State that it has become responsible for the jacket platform pursuant to s112 of the Act. The Secretary of State could therefore require a decommissioning programme for the jacket platform to be submitted, and security to be provided to secure compliance with the

programme and its conditions (s105 and s106(4)). The security can be in the form of a deposit of money, performance bond or guarantee or letter of credit (amongst others) (s114(2)).

2.25 2.16In those circumstances, a marine licence would still be required to carry out licensable activities to repurpose the structure, and we would expect a standard condition attached to the licence as follows:

> *"This licence remains in force until the authorised project has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing."*

2.26 2.17This form of condition or similar is commonplace in deemed marine licences granted as part of the DCO process and subsequently regulated by the MMO.

3. TRANSFER OF DECOMMISSIONING LIABILITIES FROM O&G REGIME

Key Steps

3.1 We believe that the following steps would be required in order to effect the transfer of the jacket's platform's decommissioning liability to Orsted (and regulation of the same under the Marine Licensing and Energy Act regimes). Some or all of these steps could potentially be set out as conditions in the sale and purchase agreement for the sale of the jacket platform to Orsted:

3.1.1 Approval by OPRED to an amendment to any approved Statutory Decommissioning Programme to remove the jacket platform from that Statutory Decommissioning Programme (with possibly a statement within that amended Statutory Decommissioning Programme that the jacket platform is to be re-purposed for use in Hornsea Four);

3.1.2 Amendment of the existing S.29 Notices issued under the Petroleum Act 1998 on the current licencees for the 'installation', to remove their application to the jacket (this may not be required if the Statutory Decommissioning Programme has already been approved, in which case all stakeholders may agree that its amendment only is sufficient – to be explored further);

3.1.2 Issuance by OPRED of amended s.29 notices to remove the platform from the list of assets covered by the notices;

3.1.3 Issuing of the marine licence to apply to the jacket platform by the MMO – we would anticipate that this licence would attach the standard condition as to decommissioning noted at para 2.15 2.24 above; and

3.1.4 The jacket platform being considered a "renewable energy installation" for the purposes of the 2004 Act, and liable to the provision of a decommissioning programme and security to the Secretary of State on request (as with the other wind farm structures e.g. turbines).

3.2 We do not believe that it would be necessary (or desirable) to transfer the relevant petroleum licences to Orsted in order to effect a transfer of the jacket. platform. We understand that the petroleum licences would be relinquished.

Removal of application of the Petroleum Act

Orsted continuing liability under Petroleum Act 1998

3.3 Given that Orsted would become the owner of the jacket (and would therefore fall within S.30(1) (d) of the Petroleum Act 1998), we do not see a legislative barrier to OPRED being entitled to serve a

S.29 Notice on Orsted. However OPRED may be comfortable in not serving a S.29 Notice on Orsted, given:

3.3 3.3.1the decommissioning of the jacket will additionally Once the platform is no longer used for the purposes falling within s30(1)(d) of the Petroleum Act, the Petroleum Act requirement to decommission will no longer apply. This is because s30(1(d) of the Petroleum Act is only relevant if the same definition of "offshore installation", as set out in s44 of the Petroleum Act at paragraph 2.6 above, is satisfied. As explained at paragraph 2.10 above, the platform does not fall within the definition of an "offshore installation" and therefore the decommissioning of the platform will be regulated by the Marine Licensing / Energy Act regime (and as once it changes use. As noted above, OPRED may obtain some additional comfort due to the fact that Orsted could be required to provide the Secretary of State and/or the MMO with decommissioning security – we understand from Orsted that on other projects Orsted has provided this security via a guarantee);.

3.3.2 OPRED would, should it become necessary in the future, be able to then serve a S.29 Notice on Orsted in relation to the jacket.

3.4 If As OPRED were able to can take comfort from 3.3.1 and 3.3.2paragraph 3.3 above, this would provide Orsted (and any other developers who may also wish to repurpose oil and gas infrastructure in this way) with clarity as to which that the only decommissioning regime that applies in practice to the repurposed infrastructure – e.g. if Orsted is not served with a S.29 Notice, Orsted will not have is the Marine Licensing / Energy Act regime, with Orsted not required to submit a costed decommissioning programme for the jacket to OPRED and will focus on the requirements of the Marine Licensing / Energy Act regimes, however OPRED can take comfort in the fact that if Orsted failed to satisfy the requirements under the Marine Licensing / Energy Act regime, OPRED could then attach liability to Orsted for decommissioning the jacket through serving a S.29 Notice on Orsted)platform to OPRED.

3.5 For completeness, it should be noted that a derogation under OSPAR the Decision 98/3 is only relevant if Orsted is seeking to have the jacket platform retained in situ in perpetuity. That is not the case, and thus a derogation under the OSPAR Decision 98/3 is not relevant to the transfer, ongoing regulation or decommissioning of the jacket. is evidenced by the fact that:

3.5.1 partial decommissioning works will already have been carried out, including the plugging and abandonment of wells, and making the platform hydrocarbon-free in accordance with the approved decommissioning programme; and

3.5.2 the Decision relates to the disposal of disused offshore installations. The Decision states (at paragraph 2) that "*The dumping, and the leaving wholly or partly in place, of disused offshore installations within the maritime area is prohibited*." The Decision defines "disused offshore installation" as "*an offshore installation, which is neither (a) serving the purpose of offshore activities for which it was originally placed within the maritime area, nor (b) serving another legitimate purpose in the maritime area authorised or regulated by the competent authority of the relevant Contracting Party*". Once converted to an artificial nesting structure, the platform will no longer serve the purpose for which it was placed into the sea. However, its use as an artificial nesting structure arguably serves a "legitimate purpose" in providing a nesting area for black-legged kittiwake, which can be regulated under the marine licensing regime. Therefore, the platform is not a "disused offshore installation" and does not fall within the remit of the Decision.

3.6 It is likely that the Hornsea Four DCO will permit Orsted to remove the jacket Therefore, a derogation under the Decision is not relevant to the transfer, ongoing regulation or decommissioning of the platform. It is likely that the Hornsea Four DCO will permit Orsted to remove the platform with the consent of the Secretary of State, subject also to receiving necessary consents to authorise the removal works. Under the existing oil and gas regulatory framework the jacket platform could only be decommissioned with the consent of the Secretary of State, and so there would be no substantive change. Given that the repurposing works described in this note have not been applied for as part of the Hornsea Four DCO, further analysis of the DCO regime under the Planning Act 2008 has not been included in this note. The provision of an artificial nest structure is however likely to be required

by the DCO, and it is noted that the latest draft in Examination of the Hornsea Four application included the following draft requirement at paragraph 7 of Part 1 of Schedule 16:

"The artificial nesting structure must not be decommissioned without prior written approval of the Secretary of State in consultation with relevant statutory nature conservation body."

20 April 2022 ~~and~~ as updated on 6 May 2022, and 13 April 2023

Pinsent Masons LLP