THE CROWN ESTATE

National Infrastructure Planning
The Planning Inspectorate
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Bristol
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By Email: NetZeroTeessideProject@planninginspectorate.gov.uk

4 July 2022

Dear Sirs

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

Application by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited ("the Applicants") for an Order granting Development Consent for the proposed Net Zero Teesside Project ("NZT")

We refer to the above application which is currently the subject of examination.

It has recently come to our attention that the latest draft Order for NZT, submitted by the Applicants to Examining Authority at Deadline 2, includes a provision (draft Article 49) which purports to disapply and effectively terminate the Interface Agreement, as defined in the draft Order, to which The Crown Estate is party.

As the Examining Authority will be aware from other parties' representations, an equivalent provision is being advanced by BP Exploration Operating Company Limited (bp) as part of its objections to the application by Ørsted Hornsea Project Four Limited (Ørsted) for an Order granting Development Consent for the proposed Hornsea Project Four Offshore Wind Farm; bp's desire is for such a provision to be included in the Order for Hornsea Project Four.

As the Examining Authority will be aware, the Interface Agreement governs the activities associated with both Hornsea Project Four and the Northern Endurance CCUS Project in an area of overlapping seabed known as the Overlap Zone and was entered into by the promoters of those projects (roles that are now fulfilled by Ørsted and bp) and The Crown Estate.

The Interface Agreement was completed simultaneously with The Crown Estate entering into the agreement for lease for the CCUS Project on 14 February 2013 and was an important pre-requisite to The Crown Estate's decision to enter into that agreement for lease. Prior to this date (on 22 December 2009) The Crown Estate had concluded a Zone Development Agreement (ZDA) in respect of Offshore Wind Leasing Round 3 Zone 4; subsequently, pursuant to the ZDA, The Crown Estate entered into an agreement for lease for Hornsea Project Four on 3 March 2016. The agreement for lease for the CCUS Project and the agreement for lease for Hornsea Project Four each contain an obligation to comply with the Interface Agreement. This provides certainty and clarity in relation to the operation of the two agreements for lease in circumstances where there are conflicts between the two projects in the Overlap Zone.

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On 16 June 2022, The Crown Estate wrote to the Examining Authority for Hornsea Project Four to set out its position in relation to the suggestion by bp that the Order for that project should include a provision to disapply the Interface Agreement.

Given that the Applicants in this case are now proposing to include a similar provision in the Order for NZT, The Crown Estate wishes to ensure that the Examining Authority is aware of its position on this issue. I therefore enclose a copy of our letter dated 16 June and ask that the Examining Authority for NZT takes into consideration the points made in that letter. However, in summary, The Crown Estate's position is as follows:

- The Interface Agreement provides a material benefit to The Crown Estate and its disapplication would have an adverse impact on The Crown Estate's interests. In particular, this would remove the clarity and certainty that the Interface Agreement provides in relation to the operation of the agreements for lease and the rights and obligations under them, where there is conflict between the CCUS Project and Hornsea Project Four in the Overlap Zone.

- Until the parties agree otherwise, the Interface Agreement is the contractual vehicle through which conflicts in the Overlap Zone are to be resolved. The Crown Estate considers that disapplication of the Interface Agreement is not necessary for either Hornsea Project Four, the CCUS Project or NZT to proceed.

- The Crown Estate's view is that the Secretary of State does not have power under section 120(3) Planning Act 2008 to disapply the Interface Agreement, certainly without provision for compensation. This would not be consistent with the remaining provisions of the Planning Act 2008 and would be contrary to Section 3 of the Human Rights Act 1998.

- In the circumstances of both Hornsea Project Four and NZT, the inclusion in either Order of a provision which has the effect of setting aside the Interface Agreement would be unreasonable, disproportionate and unprecedented, particularly where bp has voluntarily agreed to the rights and obligations under that same Agreement.

- Disapplication of the Interface Agreement is not necessary for the development which is the subject of either application (i.e., Hornsea Project Four or NZT) to proceed. Such a provision is intended only to improve the financial viability of the CCUS Project. That is not a matter "relating to" or ancillary to" to either development, in the sense that those terms are used in section 120(3) of the Planning Act 2008.

- The inclusion of any provision which has the effect of disapplying the Interface Agreement will require the consent of The Crown Estate under Section 135(2) Planning Act 2008. This is on the basis that either the Interface Agreement relates to Crown land (i.e., the seabed in the Overlap Zone) or, for the reasons detailed above, the provision would affect rights benefiting The Crown Estate.

Yours faithfully

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