Hornsea Project Four

Net Zero Teesside Development Consent Order

Written Summary of Orsted Hornsea Project Four Limited's Oral Case at Issue Specific Hearing 3

Deadline: 5, Date: 02 August 2022

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1 Introduction

1.1 Issue Specific Hearing 3 (ISH1) on the draft Development Consent Order (dDCO)took place on 12 July 2022 at 10am and was held in person at the Jury's Inn Hotel (Carlton, Dinsdale & Eston Rooms), Fry Street, Middlesbrough, TS1 1JH and virtually, with attendees attending via Microsoft Teams.

1.2 The ISH3 broadly followed the agenda published by the Examining Authority (the ExA) on 01 July 2022 (The Agenda).

1.3 The Examining Authority ("the ExA"), the Applicant, and the stakeholders (including Orsted Hornsea Project Four Limited ("Hornsea Four")) discussed the Agenda items which broadly covered the areas outlined below:

1.3.1 The articles of the dDCO;

1.3.2 Schedule 2 of the dDCO – Requirements;

1.3.3 Schedules 10 and 11 of the dDCO – Deemed Marine Licences;

1.3.4 Schedule 12 Part 4 to Part 24 of the dDCO – Protective Provisions;

1.3.5 Consents, licences and other agreements; and

1.3.6 Statements of common ground relevant to the DCO

1.4 Hornsea Four's participation in ISH3 was focused on:

1.4.1 Agenda Item 3 – the Articles of the dDCO, specifically the disapplication of the Interface Agreement proposed under Article 49 of the dDCO;

1.4.2 Agenda Item 6 – Schedule 12 Part 4 to Part 24 of the dDCO – Protective Provisions, specifically the need for protective provisions to be included in the NZT DCO for the benefit and protection of Hornsea Project Four's interests in the Overlap Zone; and

1.4.3 Agenda Item 8 – Statements of common ground relevant to the dDCO, specifically whether there was an opportunity to agree a statement of common ground between Hornsea Four and the Applicant.

Table 1: Summary of Orsted Hornsea Project Four Limited's Oral Submissions at the Issue Specific Hearing 3.

Item	ExA Question/Context for discussion	Hornsea Project Four Offshore Wind Farm Submission
Agenda Item 3 – the the Articles of the dDCO		
3	The ExA noted that Article 49 was an addition made at Deadline 2 by the Applicant, and that the Applicant at Deadline 4 suggested changes to the said Article. The ExA asked the Applicant to summarise the current position regrding Article 49 and asked Orsted to respond thereafter. The Applicant's summary of the current position regarding Article 49 was that they maintained their position that relitigation of the issue in this DCO was not required, and the only separate issue for this examination was that if disapplciation of the Interface Agreement is found by the Secretary of State to be appropriate in the Hornsea Four DCO examination, there is a justification for reproducing that provision in the NZT DCO, the purpose of reproducing such a provision in the NZT DCO being to cater for a scenario where the disapplication of the Interface Agreement (or disapplication of some of its provisions) is considered appropriate but the Hornsea Four DCO is otherwise refused or is granted but not implemented. The Applicant's justification for this was that the Interface Agreement poses a risk to the wider East Coast Cluster Plan ("the ECC Plan"), and that risk remains in the event that the Hornsea Four DCO is refused. The Applicant set out that the Interface Agreement gives rise to significant compensation liability which it considers may resutlt in the Northern Endurance Partership ("NEP") not electing to use that part of the Endurance Store in the Overlap Zone which would prevent the full delivery of the ECC Plan. The Applicant confirmed that in response to submissions from Hornsea Four and The Crown Estate, a revised approach was being proposed that would not seek to disapply the Interface Agreement but would remove BP's liability to Hornsea Four under the agreement and make provisions for compensation to be paid to Hornsea Four in lieu, but the drafting of that is yet to be finalised and will be produced at Deadline 5. The Applicant stated	Celina Colquhoun, Barrister, 39 Essex Chambers, on behalf of Hornsea Four, made submissions on the position of Hornsea Four regarding Article 49 and responded to points made by the Applicant, as follows: • Article 49 as it is drafted in the latest version of the dDCO is not appropriate and should be removed from the dDCO. Further, having considered the principle of the changes to Article 49 put forward by the Applicant (albeit without the benefit as yet of seeing the drafting to be proposed by the Applicant), Hornsea Four remains of the view that interference with the Interface Agreement is not appropriate and provisions seeking this should not be included in the NZT DCO. The reasons for reaching such a view remain as set out in its Legal Submission (REP2-092). • Hornsea Four reserves its final position on the changes to Article 49 suggested by the Applicant until it has seen the revised drafting to be produced by the Applicant at Deadline 5, however Hornsea Four does not conisder that the propsoed changes will remove the need for Crown consent. The Crown Estate will also need an opportunity to respond to the proposed new drafting of Article 49 therefore this issue is not resolved and cannot be resolved until the parties have seen the proposed drafting. • In response to statements made by Mr Philpott, QC on behalf of the Applcant that the issue of intereference with the Interface Agreement (and indeed the impact of the NEP Project on Hornsea Project Four more generally) does not need to be relitigated in the NZT DCO Examination, Ms Colquhoun, on behlaf of Hornsea Four clarified that:

	they consider that proportionate compensation addresses the Human Rights Act concerns and that The Crown Estate rights would no longer be affected by the change therefore no Crown consent would be required. The Applicant concluded that their suggested approach is that this matter should not be considered at any length in the NZT DCO examination as substantive, technical and legal issues are being examined in the Hornsea Four Offshore Wind Farm DCO examination and the ExA will report on those matters to the Secretary of State before a decision on the NZT DCO application is made. The Applicant reiterated that the only matter for the ExA in the NZT DCO is whether, in light of the report to the Secretary of State on the Hornsea Four DCO and any decision therein on whether the Interface Agreement should be disapplied, a provision disapplying the Interface Agreement should be replicated in the NZT DCO.	(i) there is a link between the Proposed Development and the Northern Endurance Partnership Project ("the NEP Project"). The Applicant has accepted there is a link, but does not accept that there is an obligation to carry out an assessment of the impacts of the NEP Project on Hornsea Four as part of its environmental impact assessment for the Proposed Development (notwithstanding that it has latterly submitted to the ExA an assessment of the impacts of the NEP Project on Hornsea Four Offshore Wind Farm in a scenario where no development is permitted in the Overlap Zone (REP4-030)). (ii) Hornsea Four does consider there to be an obligation on the Applicant to carry out an assessment of the impacts of the NEP Project on Hornsea Four and for the Examining Authority and Secretary of State to consider these impacts and possible mitigations when reaching a decision on the NZT DCO. Schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations") does not use the term propsed development when referring to what must be assessed. The term used is project. It is well established in legal authorities (including but not limited to *R(Burridge v Breckland District Council [2013] EWCA Civ 228*) that the project for which the environmental effects must be assessed is wider than just the proposed development, and the notion that development assocaited with the proposed development is part of the project for EIA purposes is also well established. In this scenario, it is therefore correct that the NZT DCO examination deals with the impacts from the NEP Project on nearby land uses such as Hornsea Four Offshore Wind Farm and that the ExA report on this matter to the Secretary of State. (iii) It is entirely inappropriate that this issue is left to be dealt with solely in the Hornsea Four DCO examination. The two projects must be determined on their own merits. In addition there is no guarantee regarding when the decision on the Hornsea Four DCO

		will be made, nor that it will be made in advance of the NZT DCO decision, nor that it will consider or clearly report on all matters relevant to the NZT DCO Application. The ExA must therefore consider in full in the NZT DCO Examination matters relating to the disapplication of the Inteface Agreement and the need for Protective Provisions and report on these matters to the Secretary of State independently of any parallel considerations in the Hornsea Four DCO. Any technical evidence regarding the possibility of co-location between the NEP Project and Hornsea Four Offshore Wind Farm would form part of the mitigation in carrying out an assessment of the impact of the project on Hornsea Four Offshore Wind Farm therefore those technical matters need to be before the ExA. • In response to submissions on behalf of the Applicant in respect of the cost and timing it would take to examine these issues in the NZT DCO exammination, Hornsea Four's position is that the evidence submitted to the Hornsea Four Offshore Wind Farm DCO examinaiton can be reproduced for the NZT DCO examination, as has been done to date by both parties, without much difficulty and, as a result, there should be no consequential impact on the length of the NZT DCO examination in order to properly consider the relevant matters. In any event, for the reasons outlined above, it is important that the ExA consider all matters relevant to this DCO and do not rely on the assessment of similar issues in the Hornsea Four Offshore Wind Farm DCO. • The Applicant stated during oral submissions that Hornsea Four has not made it's position clear on whether it would oppose the reproduction of any provisions dealing with the Interface Agreement in the Hornsea Four Offshore Wind Farm DCO in the NZT DCO. Hornsea Four's position has been set out in the position statement to be submitted by the Applicant at Deadline 5, but for ease of reference is reproduced here to assist the ExA:

		• Hornsea Four considers that the need for and appropriateness of a provision in the NZT DCO which interferes with the Interface Agreement should be fully examined in the NZT examination and considered by the Secretary of State in the context of the facts and circumstances at the time of the NZT DCO decision. Hornsea Four consider that it would be wrong to blindly import a provision from the Hornsea Four Offshore Wind Farm DCO decision without a thorough consideration of the applicability of the reasoning for that decision to the NZT DCO decision. Looking at one possible scenario (purely as an example), where the Secretary of State refuses the Hornsea Four Osshore Wind Farm DCO but notes that, had he approved the DCO powers as sought he would have been minded to impose a provision dealing with the Interface Agreement, it does not necessary follow that the Secretary of State would consider it appropriate to interfere with the Interface Agreement as he has not, in fact, granted the wider DCO powers. • The Secretary of State should be determining in the context of the NZT DCO application whether it is appropriate to include any article which seeks to interfere with the Interface Agreement at the instance of the Applicant of the NZT DCO, taking into account all relevant matters and evidence led as part of the NZT DCO examination and weighing the issue in the overall balance. • Hornsea Four maintains its objections to the principle of interference with the Interface Agreement under the NZT DCO. This includes its submissions that to lawfully disapply the Interface Agreement (or any part thereof) the Applicant would need to obtain the consent of The Crown Estate. It also includes its objection to the introduction of such a

		provision part way through the NZT DCO examination, which Orsted considers to be a material change to the NZT DCO which has material and adverse impacts on Hornsea Four's rights and interests, and should not be permitted. • Hornsea Four has not had the opportunity to consider the re-drafting of Article 49 to be put forward by the Applicant and reserves its final position on this matter until it has reviewed the same. Hornsea Four intends to further supplement its legal submissions on these issues on or before Deadline 6.
4	The ExA asked for Hornsea Four to outline their position on the need for protective provisions for the protection of the Hornsea Four offshore Wind Farm in the NZT DCO.	Celina Colquhoun, Barrister, 39 Essex Chambers, on behalf of Hornsea Four, set out the position of Hornsea Four on the need for protective provisions, as follows: • The Endurance Store is an important element of the project that is before the ExA, and this also has impacts on the Hornsea Four Offshore Wind Farm by reason of both projects being proposed in the Overlap Zone. As such, there is a clear interrelationship between the Proposed Development and Hornsea Four Offshore Wind Farm. The Proposed Devlopment needs to use the Endurance Store for its ultimate aim of storing CO_2 emissions and therefore the Endurance Store is an important part of the justification for the NZT DCO. The conclusion must be that the project, for the purposes of Schedule 2 of the EIA Regualtions, includes the NEP Project (which includes the use of the Endurance Store). • Given this interrelationship between the two projects, it is entirely appropriate to include protective provisions in the NZT DCO which require the Applicant to refrain from undertaking its development until such time as it is known that the project as a whole can come forward in an acceptable way. By including protective provisions

		for the benefit of the Hornsea Four Offshore Wind Farm, this allows for the issue of co-location and interface arrangements to be dealt with through the process set out in Hornsea Four's proposed protective provisions (REP2-089 Appendix 1) which would seek to prevent development until a coexistence and proximity agreement has been entered into with the carbon storage licensee of the UK Carbon Dioxide Appraisal and Storage Licence CS001, or it has been agreed between the parties or determined by the Secretary of State that no such agreement is required. • The Applicant has not provided any comments on the protective provisions proposed by Hornsea Four. In response, Mr Philpott, QC set out the position of the Applicant in which the need for protective provisions was disputed on the basis that there is no nexus between the works proposed by the NZT DCO and the works proposed by the Hornsea Four Offshore Wind Farm DCO. The Applicant also stated that if the Hornsea Four Offshore Wind Farm DCO is granted with the protective provisions that Hornsea Four is seeking (as opposed to the protective provisions which would exclude any development in the Overlap Area being promoted by BP) then these protective provisions are sufficient to protect Hornsea Four's interests. The protective provisions proposed by Hornsea Four for inclusion in the Hornsea Four Offshore Wind Farm DCO are for the benefit and protection of the carbon storage licensee of the UK Carbon Dioxide Appraisal and Storage Licence CS001, as operator of the Endurance Store being proposed by the Northern Endurance Partnership. Subject to limited exceptions, the Hornsea Four proposed protective provisions prevent development in the overlap zone until a coexistence and proximity agreement has been entered into with the carbon storage licensee, or it has been agreed or determined that no such agreement is required. These provisions oblige Hornsea Four to engage with the carbon storage licensee prior to undertaking any works in the overlap zone.

		It is appropriate that the NZT DCO should contain reciprocal protections for Hornsea Four which ensure that the carbon storage licensee is under a reciprocal obligation to engage with Hornsea Four on this matter. Hornsea Four are seeking a fair and pragmatic mechanism to ensure that the respective projects engage to explore the degree of co-existence that can be achieved (thereby realising the maximum benefits of the respective projects). To achieve that both sides should be obliged to "come to the table" and participate in these discussions in advance of finalising their respective plans. The protective provisions offered by Hornsea Four in the Hornsea Four Offshore Wind Farm DCO, together with the protective provisions sought by Hornsea Four in the NZT DCO provide the required reciprocal obligation to engage. Hornsea Four's position is that the ExA (and the Secretary of State) need to engage with what activities are proposed in the area within the Endurance Store as a result of the proposed development and the NEP Project (forming part of the same project), and, in particular to understand and weigh the impacts on Hornsea Four Offshore Wind Farm. The ExA (and the Secretary of State) must therefore consider the impacts of the project on Hornsea Four Offshore Wind Farm, and the need to mitigate the impact on Hornsea Four Offshore Wind Farm by including protective provisions in the NZT DCO for their benfit and protection.
8	The ExA raised the question of whether there is a need for a statement of common ground between the Applicant and Hornsea Four. The ExA noted the wide differences between the parties and questions why a statement of common ground had not been progressed.	Both parties undertook to consider whether there were any areas of agreement that could form the basis of a statement of common ground. Hornsea Four remains committed to agreeing matters where possible.