

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

17 August 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 our letter of 4 July 2022 as well as the Examining Authority's second written questions and requests for information ("ExQ2"), which were issued on 9 August 2022.

Question DCO.2.14 of ExQ2 concerns the proposed modification of the Interface Agreement and this has been directed to The Crown Estate and Ørsted. The question refers to the Applicants' proposed amendments to Article 49 which were included in the draft Order submitted at deadline 5 and the revised explanatory memorandum. The Examining Authority has invited comments including on the issue of whether Crown consent would be required for the inclusion of Article 49.

We note that Article 49 would disapply only part of the Interface Agreement namely, the potential liability of BP Exploration Operating Company Limited ("bp") to pay compensation to Ørsted. In place of this, the Applicants have made provision for the Secretary of State to determine an appropriate level of compensation which would be payable to Ørsted as a result of the exclusion of the Hornsea Project Four Offshore Windfarm ("HOW4") from the overlap zone (or the "exclusion area" as it is referred to in the draft Order).

The Crown Estate remains concerned about the setting aside of any provision of the Interface Agreement in circumstances where all of the parties freely agreed to the rights and obligations under that Agreement. The Crown Estate maintains the position set out in the letter dated 4 July 2022, which is briefly as follows:

- The disapplication of the Interface Agreement – and any part of it - would be unreasonable and disproportionate.
- The scope of the Secretary of State's power under Section 120(3) Planning Act 2008 is not sufficient to give effect to the disapplication of the Interface Agreement, as proposed by the Applicants.
- The inclusion in the Order of any provision which has the effect of disapplying the Interface Agreement (or any part of it) will require the consent of The Crown Estate under Section 135(2) Planning Act 2008.

Notwithstanding the changes to Article 49, it remains the case that The Crown Estate's consent will be needed under Section 135(2) for the inclusion of this provision in the Order, even assuming the rights of The Crown Estate are not directly affected. This is because the effect of Article 49 is to modify the Interface Agreement and that Agreement directly affects and relates to Crown land (i.e., the seabed in the overlap zone).

On the question of whether consent would be given under Section 135(2), currently The Crown Estate is not minded to agree to the inclusion of Article 49 in the Order or the disapplication of any part of the Interface Agreement. However, we are willing to review our position once we have an understanding of the recommendations of the Examining Authority, the position of the Secretary of State and the progress of discussions between the parties to the Interface Agreement between now and then.

For transparency, as noted by the Applicants in the explanatory memorandum, the provisions of Article 49 mirror the protective provisions which bp have sought to include in the development consent order for HOW4. The Crown Estate's position on those protective provisions is identical to the position set out in this letter.

Yours faithfully



Simon Goodwin

Head of Marine Delivery