



# **Hornsea Project Four**

**Net Zero Teesside Development Consent Order**

**Comments on the Applicant's Submissions at  
Deadline 6**

**Deadline: 7, Date: 01 September 2022**

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## **1 Introduction**

- 1.1 Orsted Hornsea Project Four Limited (“Hornsea Four”) has reviewed the responses submitted by Net Zero Teesside Power Ltd and Net Zero North Sea Storage Ltd (“the Applicant”) to the Examining Authority’s second round of written questions, and has also reviewed the Applicant’s comments on Hornsea Four’s Deadline 5 submission.
- 1.2 This submission sets out Hornsea Four’s comments in response to those submissions.

## **2 The Applicant’s responses to the second round of written questions**

- 2.1 Table 1 below sets out the ExA’s question, the Applicant’s response and Hornsea Four’s comments in relation to that response.

**Table 1: Orsted Hornsea Project Four Limited’s comments on the Applicant’s responses to ExQ2.**

ExQ 2	Question to:	Question	Applicant’s Response	Hornsea Four’s Comments
COM 2.2	Applicants	<p>In its response to the hearings held during w/c 16 May 2022 [REP5-038], Orsted stated that it does consider there to be an obligation on the Applicants to carry out an assessment of the impacts of the Northern Endurance Partnership (NEP) project on Hornsea Project Four (HP4) as part of the DCO. Schedule 2 of the Infrastructure Planning (EIA) Regulations 2017 uses the term ‘project’ rather than development.</p> <p>i) Do the Applicants agree with the interpretation of ‘project’ in REP5-038? If not, please explain why.</p> <p>ii) Should the combined and cumulative effects of the wider NEP project and HP4 be assessed under the regulations? If not, please explain why.</p>	<p>i) The Applicants have submitted an ES in respect of the DCO application which assesses the likely significant environmental effects of the development that has been applied for in this DCO application (the “Proposed Development”) and the offshore transport and storage project which forms part of the wider NEP project. This is explained in ES Volume 1 Chapter 24 (Cumulative and Combined Effects) [APP-106] and in Appendix 24C [AS-032]. This has been supplemented with an assessment of the impact of the offshore elements of the NEP Project on Hornsea Project Four (see Annex 1 to Applicants response to Orsted HP4 D3 Submission July 2022 [REP4-030]). The assessment undertaken recognises the relationship between the Proposed Development and the wider NEP project and carries out the assessment accordingly. The assessment in Chapter 24 includes a cumulative assessment in accordance with a zone of influence as advised in Advice Note Seventeen. The assessments undertaken recognise the relationship between the development proposed under the DCO and the wider elements of the NEP Project. The definition of ‘project’ does not therefore take matters further in this case as the ES already recognises the need to consider the impacts of the Proposed Development and wider NEP Project. The Applicants’ position is more fully</p>	<p>Hornsea Four undertook to supplement its legal submissions on the requirement to assess the impacts of the NEP Project as a whole, and particularly the need to assess the impacts on Hornsea Four Offshore Wind Farm in its post-heating submission following Issue Specific Heating 3 (REP5-038).</p> <p>At Deadline 6, Hornsea Four submitted as Appendix 1 to its responses to the ExA’s second round of written questions (REP6-139) a legal opinion from Richard Harwood QC setting out the legal basis on which the project as a whole must be assessed (including an analysis of what the “project” is for the purpose of this assessment), the legal basis on which the impacts of the project as a whole on Hornsea Four Offshore Wind Farm must be assessed, and the matters which must be considered by the Secretary of State (including the need for any protective provisions for the benefit and protection of Hornsea Four Offshore Wind Farm).</p> <p>This legal opinion sets out Hornsea Four’s position on the interpretation of “project”.</p>

			<p>set out in Appendix 6 to the Written Summary of Oral Submissions for ISH1 [REP1-035].</p> <p>ii) As the DCO Order Limits are 150 km from the HS4 Order Limits, the HS4 development was screened out of the cumulative effects long list considered in ES Volume 1 Chapter 24 (Cumulative and Combined Effects) [APP-106]. Cumulative effects are however being considered in the offshore EIA for the NEP part of the project. The Applicants' position is that there are no likely significant combined and cumulative effects associated with the wider NEP project and Hornsea Project Four. The Applicants have also considered the environmental information submitted in support of the Hornsea Project Four examination and are not aware of any assessment that concludes that there would be any cumulative and in-combination effects associated with the wider NEP project and Hornsea Project Four.</p>	
DCO 2.15	Orsted The Applicants	In the Position Statement between the Applicants and Orsted Hornsea Project Four Limited [REP5-022] Orsted commented (paragraph 2.1.5) 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 SoS in the context of the facts and circumstances at the time of the NZT DCO decision. The Applicants' Summary of Oral Submissions for ISH3	The Applicants oral submissions at Issue Specific Hearing 3 ("ISH3") (as summarised in the subsequent written summary submitted at Deadline 5, [REP5-025, electronic pages 11 to 15]) explained why the Applicants consider it is unnecessary to re-litigate the same submissions regarding the Interface Agreement and provisions in its respect in the NZT DCO, as have already been made in the Hornsea Project Four DCO. This overarching point is subject to one narrow exception, limited to the justification for including an equivalent provision addressing the Interface Agreement in the NZT DCO where the SoS has	Hornsea Four has reviewed the opinion of Jason Coppel QC. Hornsea Four intends to respond to the content of this opinion, and will endeavour to do so on or before Deadline 8.

		<p>[REP5-025] provides documents which had been submitted to the Hornsea Four Examination, namely the Interface Agreement and NZT's commentary on the Interface Agreement.</p> <p>Orsted and the Applicants are asked to confirm whether there are any other documents submitted to the Hornsea Four Examination which are of relevance to, and have not yet been submitted to, this Examination.</p>	<p>determined it appropriate to include such provision in the Hornsea Project Four DCO. The Applicants have consistently made clear that this narrow point is a matter that falls to be examined as a separate issue in this NZT DCO examination (as summarised in the written summary of submissions at ISH3 discussed above), and presented in the Joint Position Statement submitted with Orsted at Deadline 5 [REP5-022, electronic page 4]. Without prejudice to those primary submissions about the need to re-litigate the same issues in the NZT DCO examination, the Applicants' also include as Appendix DCO.2.15 to this submission, bp's recent submission into Deadline 8 of the Hornsea Project Four DCO examination, which includes at Annex 1 a Legal Opinion from Jason Coppel QC, which confirms that:</p> <p>A. s. 120(3) PA 2008 read, in particular, with paragraph 3 of Schedule 5 to that Act, clearly provides the necessary vires for the inclusion of bp's proposed protective provisions in the Hornsea Project Four DCO; and</p> <p>B. in circumstances where the provisions are considered to interfere with the 'possessions' of Orsted in terms of A1P1 (by reference to their rights under the Interface Agreement), that the SoS would be entitled public interest, given the very strong public interest in preserving the full extent of the Endurance Store and so the delivery of the ECC plan.</p> <p>Whilst this Opinion was provided in the context of bp's proposed protective provisions into the</p>	
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			Hornsea Project Four DCO, it provides similar confirmation in respect of the equivalent drafting of Article 49 in the NZT DCO considering the corresponding rationale.	
DCO 2.16	Applicants	In the Position Statement between the Applicants and Orsted Hornsea Project Four Limited [REP5-022] the Applicants stated (paragraph 2.1.4) that the need for Article 49 is to deal with the situation where the SoS finds it appropriate to include a provision dealing with the Interface Agreement in the HP4 DCO but nonetheless refuses that application for other reasons or the HP4 DCO is granted subject to such provision but not implemented. The Applicants also recognise that where the SoS does not consider it appropriate to include a provision in the HP4 DCO dealing with the Interface Agreement, it would not be appropriate to include the equivalent provision in the NZT DCO. The Applicants are asked to clarify why, when the Order Limits do not extend to the Endurance Store, this DCO should address matters where there is a 'lack of direct physical conflict between the development proposed in the NZT DCO and HP4'.	Although there is no direct physical conflict between the Proposed Development and Hornsea Project Four, there is a direct physical overlap between Hornsea Project Four and part of the Endurance Store to which the offshore elements of the NEP project relate. The Applicants have been clear that there is a relationship between the offshore elements of the NEP project (subject to its own, separate consenting process) and the Proposed Development, making it appropriate to include the Article 49 provision in the circumstances described in the Position Statement (and repeated in paragraphs 3.7.15 to 3.7.18 of the updated Explanatory Memorandum submitted at Deadline 5 [REP5-005]).	Hornsea Four has made submissions to the ExA previously on why it does not consider Article 49 is appropriate and therefore does not intend to repeat these here. These submissions can be found in the following documents: <ul style="list-style-type: none"> <li>- REP2-089 Written Representation</li> <li>- REP2-092 Legal Submission Note</li> <li>- REP3-022 Comments on Deadline 2 Submissions</li> <li>- REP5-022 Position Statement</li> <li>- REP5-038 Written Summary of Orsted Hornsea Project Four Limited's Oral Case at Issue Specific Hearing 3</li> <li>- REP6-139 Hornsea Four Responses to ExQ2</li> </ul>
DCO 2.18	Applicants Orsted	In the Position Statement between the Applicants and Orsted Hornsea Project	The Applicants set out in those submissions how and why the Hornsea Project Four DCO can and will	Hornsea Four does not agree with the Applicant's position that Hornsea Four has failed to provide a

		<p>Four Limited [REP5-022] Orsted confirmed (paragraph 3.1.7) that it had submitted a draft set of protective provisions for inclusion in the NZT DCO (Appendix 1 [REP2-089]). (At D3 the Applicants indicated (paragraph 13.3.3 [REP3-012]) that they did not propose to comment on the detail of Orsted's protective provisions because there was no need/ justification for them.) The Applicants' position (paragraph 3.1.2 [REP5-022]) is stated to be that they are not aware of any explanation having been advanced by Orsted as to the need for additional protective provisions in the NZT DCO in the scenario where Orsted's submissions as to protective provisions on the HP4 DCO have been accepted by the SoS.</p> <p>i) The Applicants are asked to comment on Orsted's proposed protective provisions [REP2-089].</p> <p>ii) Orsted is asked to clarify why it requires protective provisions in the NZT DCO for the benefit and protection of HP4 when the NZT DCO does not extend to the Endurance Store?</p> <p>iii) Should measures to safeguard the delivery of the HP4 be managed though the approvals process for the offshore elements of</p>	<p>deal comprehensively with the issue of whether and, if so, what protection is required for Orsted to ensure that Hornsea Project Four can successfully be delivered and why, by consequence, there was no need or justification to repeat the same in the NZT DCO. As a result (and relevant to subparagraph (ii) of this question), the Applicants' main comment on Orsted's proposed protective provisions is that no proper explanation has been advanced to date as to why these (or any other provisions) are necessary over and above what can be secured through the Hornsea Project Four DCO. That point is fundamental, and unless and until it has properly been addressed by Orsted it is simply not possible to provide meaningful comments on the detailed drafting that has been proposed. Protective provisions are only included in Orders where they are necessary (both in principle and in their detailed drafting) to overcome specific potential adverse impacts that might otherwise arise as a result of the exercise of the powers in the DCO. This will generally arise in circumstances where exercise of the powers sought (including for example powers of compulsory acquisition and temporary possession) could affect the land, rights and/or apparatus of statutory undertakers. In this case Orsted has yet to identify why (either in principle or in detail) any additional protection is needed in the NZT DCO to safeguard the delivery of Hornsea Project Four above and beyond any provision that could be included (and which it is</p>	<p>proper explanation as to why protective provisions are necessary over and above what can be secured in the Hornsea Project Four DCO. Hornsea Four has provided its reasoning for why protective provisions for the protection and benefit of Hornsea Four Offshore Wind Farm are appropriate and necessary, including why they are needed in addition to protective provisions in the Hornsea Project Four DCO, in the following documents:</p> <ul style="list-style-type: none"> <li>- REP1-052 Written Summary of Orsted Hornsea Project Four Limited's Oral Case at Issue Specific Hearing 2</li> <li>- REP2-089 Written Representation</li> <li>- REP5-022 Position Statement</li> <li>- REP5-038 Written Summary of Orsted Hornsea Project Four Limited's Oral Case at Issue Specific Hearing 3</li> <li>- REP6-139 Hornsea Four Responses to ExQ2</li> </ul>
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		<p>the NZT project rather than the NZT DCO?</p> <p>Has Orsted sought to discuss issues and propose protections with the advisors to the decision maker in respect of the storage permit process and the related EIA process?</p>	<p>seeking to include) in the Hornsea Project Four DCO. That is unsurprising, because of the wide scope that exists for including appropriate provision within the Hornsea Project Four DCO and the absence of any suggestion to the Examining Authority considering Orsted's application that successful delivery of that project depends on obtaining some specific additional protection in the NZT DCO. In those circumstances no need has so far been identified for any of the individual protective provisions. If Orsted is able to identify specific gaps in the protection that can reasonably be achieved within the scope of the Hornsea Project Four DCO, the Applicants would then be in a position to consider and respond to any such suggested gaps. Assuming that it could be established that a gap existed, it would then be possible to consider what additional protection might be justified within the NZT DCO and the appropriate form of drafting to secure it. Unless and until that has been done, however, it is not apparent what the drafting needs to achieve and therefore any consideration of individual provisions would take place in a vacuum and be devoid of any practical utility. In summary, either:</p> <p>i) Orsted's submissions are preferred on the Hornsea Project Four DCO, 55 such that all of the protection that Orsted considers to be necessary and appropriate to ensure the successful delivery of Hornsea Project Four is included within that Order. In those circumstances bp's alternative</p>	
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			<p>proposed protective provisions will have been rejected by the SoS. There would be nothing authorised by the NZT DCO which would impede the delivery of Hornsea Project Four (as Article 49 would logically not be included in such circumstances, with the equivalent provision having not been included in the Hornsea Project Four DCO) and so no need to duplicate the same drafting in the NZT DCO; or</p> <p>ii) bp's submissions are preferred on the Hornsea Project Four DCO, in which case the SoS will have rejected Orsted's case for its preferred protective provisions and there would be no basis for reaching an inconsistent decision in the NZT case by imposing Orsted's equivalent protective provisions in the NZT DCO.</p> <p>Whilst the Applicants appreciate this is an unusual position, because of the need to consider how the different scenarios which could emerge in the Hornsea Project Four DCO impact upon the recommendation and decision reached in this NZT DCO application, the narrow question of whether Orsted require protective provisions is clear cut. For the reasons summarised above, there is no rational case for the inclusion of any such provisions, regardless of the scenarios which emerge in the Hornsea Project Four DCO.</p> <p>For similar reasons, it is not clear why any additional provision/conditionality would need to be considered in the separate consenting process for the offshore elements of the NEP project</p>	
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			<p>(considering the scenarios discussed above, and the anticipated timescales for the determination of such consents (due May/June 2023, so some time after the expected determination of the Hornsea Project Four DCO)); however, such issues can be raised by Orsted and considered by the decision-maker in that process as appropriate.</p>	
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### **3 Comments on the Applicant's comments on Hornsea Four's Deadline 5 submission**

- 3.1 The Applicant provided comments on Hornsea Four's Deadline 5 submission at Section 8 of REP6-122. It is noted that the Applicant disagrees with Hornsea Four's position that the mitigation proposed by the Applicant (the relocation of turbines to the residual part of the development boundary or building out fewer larger turbines) is not an appropriate solution.
- 3.2 Hornsea Four maintains its position that the suggested mitigation would not be appropriate as it would render the project far less commercially competitive. The reasons for this have been set out previously and are not repeated here. For reference, Hornsea Four's position on this matter can be found in the following documents:
  - 3.2.1 REP2-089 Written Representation
  - 3.2.2 REP 5-037 Comments on the Applicant's Submissions at Deadline 4
- 3.3 As such, Hornsea Four continues to disagree with the conclusions on residual significance set out in the Applicant's assessment of the impacts on Hornsea Four.