



Hornsea Project Four

Written Summary of Orsted Hornsea Project Four Limited's Oral Case at Issue Specific Hearing 5

Deadline: 11, Date: 26 October 2022

Table of Contents

1 Introduction3

List of Tables

Table 1: Summary of Orsted Hornsea Project Four Limited’s Oral Submissions at the Issue Specific Hearing
5..... 4

1 Introduction

- 1.1 Issue Specific Hearing 5 (ISH5) on draft Development Consent Order (“dDCO”) for the Net Zero Teesside Project took place on 18 October 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 ISH5 broadly followed the agenda published by the Examining Authority (“the ExA”) on 11 October 2022 (“the Agenda”).
- 1.3 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 27 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 ISH5 was focused on:
 - 1.4.1 Agenda Item 3 – the Articles of the dDCO, specifically the disapplication of parts of the Interface Agreement proposed under Articles 49 and 50 of the dDCO; and
 - 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.

Table 1: Summary of Orsted Hornsea Project Four Limited’s Oral Submissions at the Issue Specific Hearing 5.

Item	ExA Question/Context for discussion	Hornsea Project Four Offshore Wind Farm Submission
<i>Agenda Item 5 – the components of the Net Nero Teesside Project</i>		
3	<p>The ExA summarised the current position with Articles 49 and 50 and explained that since the last hearing on the dDCO there have been amendments to modify the Interface Agreement rather than disapply it in its entirety. Article 49 has been replaced by articles 49 & 50. The ExA noted that there have been second written questions (“ExQs”) from the examining authority including ExQs 2.14 – 2.17 which address elements of the Interface Agreement. Responses to these questions were provided at deadline 6 as well as further responses at deadline 7, 8 and 9.</p> <p>The ExA confirmed that they have a full understanding of the parties positions in relation to these articles, and did not propose to examine these issues in detail at ISH5, but asked Hornsea Four and the Applicant to make any additional submissions.</p>	<p>Emma Moir, Solicitor, Shepherd and Wedderburn LLP, on behalf of Orsted Hornsea Project Four Limited (Hornsea Four), set out the position of Hornsea Four regarding Articles 49 and 50, as follows:</p> <ul style="list-style-type: none"> • The latest update to the DCO submitted at Deadline 6 (REP6-002) split article 49 into alternative articles, one where the compensation amount is agreed at the date of granting the NZT DCO, and the other where the compensation amount is not agreed, in which case it must be determined by the Secretary of State within 2 months of the NZT DCO coming into force. This does not change the principle of what was previously proposed by article 49, therefore Hornsea Four’s position remains as set out in written submissions, which for the assistance of the ExA, is set out in the following documents: <ul style="list-style-type: none"> ○ REP2-089 Written Representation ○ REP2-092 Legal Submission Note ○ REP3-022 Comments on Deadline 2 Submissions ○ REP5-022 Position Statement ○ REP5-038 Written Summary of Orsted Hornsea Project Four Limited’s Oral Case at Issue Specific Hearing 3 ○ REP6-139 Hornsea Four Responses to ExQ2 ○ REP8-056 – Comments on deadline 7 submissions ○ REP9-032 Legal Submission

		<ul style="list-style-type: none">• Hornsea Four maintains that the disapplication of provisions related to BP's liability to Hornsea Four under the Interface Agreement would be to deprive Hornsea Four of its contractual rights in an unprecedented manner, which is not in the public interest, and that there are alternative means freely available to the parties to revisit compensation quantum via renegotiation of commercial terms.• It was explained that Hornsea Four has sought clarification in its Deadline 9 submission (REP9-033) from the Applicant following its comments on Deadline 7 submissions at Deadline 8 (REP8-049) which provided comments on the legal advice of Richard Harwood KC. One point Hornsea Four is seeking clarification on is that the applicant appears to suggest that none of the infrastructure or powers sought will be used to generate or transport gas in the Overlap Zone. Reference is made to this occurring "largely outside" of the Overlap Zone rather than completely and this introduces significant ambiguity, and contradicts previous submissions made by the Applicant during the Examination, for example at Deadline 1 at paragraph 36.2.2 of the Applicant's Comments on Relevant Representations (REP1-045)) where it was stated that the offshore CO2 transport and storage elements were in part within the Overlap Zone. Orsted requires clarity on this point in order to finalise their position. If there is no physical nexus between the project and the Overlap Zone, Hornsea Four considers this calls into question whether the interference with the Interface Agreement in the terms proposed by draft DCO Articles 49 and 50 is sufficiently related to, or matters ancillary to, the development for which consent is to be granted as is required by Section 120 of the Planning Act 2008.
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>The Applicant commented firstly on the Human Rights Act issues which have been raised in relation to articles 49 and 50, and secondly on the degree of physical nexus between the two projects and their conclusions that there is vires for the imposition of articles 49 and 50. The applicant acknowledged that a full response will be provided in writing at Deadline 11. The Applicant also reiterated a point made in previous hearings and in writing that there is a limited extent to which these issues need to be dealt with in this Examination, noting that the Hornsea Four Offshore Wind Farm DCO Examination has now concluded, and that there is no indication of likely delay. The Applicant considers that it is likely the Secretary of State will determine the NZT DCO applicaiton approximately three months after he determines Horsnea Four's DCO.</p> <p>In response, Miss Moir explained that Hornsea Four remain of the view that the imposition of Articles 49 and 50 ought to be assessed fully as part of the NZT DCO Examination. The Applicant is seeking a power within the NZT DCO to disapply key parts of the Interface Agreement entered into to govern co-operation (and what happens in the event that co-operation is not possible) between the parties which is independent of BP's request under the Hornsea Four Offshore Wind Farm DCO for protective provisions with a similar effect. Its acceptability must therefore be thoroughly tested as part of the examination into this DCO, and the Secretary of State should take into account all relevant matters and evidence led as part of the NZT DCO examination, weighing the issue in the overall balance. It would be wrong to blindly import a provision from the Hornsea Project Four DCO decision without a thorough consideration of the applicability of the reasoning for that decision to the NZT DCO decision.</p> <p>Hornsea Four will respond fully in writing at Deadline 12 to the other points raised by the Applicant once the Applicant's full written response has been provided at Deadline 11.</p>
--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6	ExA invited Hornsea Four and the Applicant to make submissions regarding the protective provision which Hornsea Four is seeking to include in the NZT DCO.	Miss Moir on behalf of Hornsea Four confirmed that no further submissions were proposed at the hearing, and that final submissions would be made in writing once clarity had been provided by the Applicant in writing at Deadline 11 on the questions raised. The Applicant also had no further points to make at the hearing.
---	------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------