

Orsted Hornsea Project Three (UK)
Limited
5 Howick Place
London
SW1P 1WG

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Our ref. 08140908_A

Sheringham and Dudgeon Extension Projects

Orsted Hornsea Project Three (UK) Limited

Written Representation

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This written representation is made by Orsted Hornsea Project Three (UK) Limited (“**Hornsea Three**”), the named undertaker on the Development Consent Order (**DCO**) for the Hornsea Three Offshore Wind Farm Order 2020 (the “**Hornsea Three Order**”). Discussions are ongoing between Hornsea Three and Equinor New Energy Limited (the “**Applicant**”) in relation to the interactions between the two projects.

As set out in its relevant representation [RR-072], and Written Representation [REP1-154] Hornsea Three considers that the two schemes can co-exist and therefore does not have an in-principle objection to the Application. However, there are a number of interactions between the Proposed Development and authorised development permitted by the Hornsea Three Order that will need to be managed to ensure that Hornsea Three can be constructed without impediment and no serious detriment is caused to Hornsea Three once operational. The interactions can be seen on plans included in Chapter 5 Figures – EIA Methodology (Volume 6.2.5) [APP-118].

Hornsea Three has been in ongoing discussions with the Applicant to facilitate agreement between the parties to ensure both projects can co-exist. Discussions regarding a detailed cooperation agreement are at an advanced stage but the drafting has not yet been agreed.

Hornsea Three notes that updated protective provisions for the benefit of Hornsea Three were included in Part 10 or Schedule 14 to the version of the draft DCO submitted at Deadline 5 [REP5-006]. Hornsea Three understands that further agreed updates to Part 10 or Schedule 14 to the version of the draft DCO will be submitted by the Applicant at Deadline 7.

However, and as set out in Hornsea Three’s Deadline 6 representation [REP6-033], Hornsea Three still requires the following aspects to be included in the protective provisions:

1. A requirement to ensure that access is maintained at all times for Hornsea Three to the Hornsea Three Order limits, including the scheduling of vessel movements offshore.
2. A full indemnity is provided to Hornsea Three in respect of any delays to the construction of Hornsea Three as a result of the specified works. The construction programme for a nationally significant infrastructure project such as Hornsea Three, including both offshore

and onshore works, is complex and any interruptions to the construction programme could result in significant delays and financial consequences.

3. More detailed cooperation provisions are included for the coordination of offshore mitigation schemes in respect of benthic habitats, marine mammals and engagement with fisheries due to the potential for overlapping construction works.

Hornsea Three remains hopeful that agreement can be reached with the Applicant. However, as agreement has not yet been reached, Hornsea Three has attached its preferred drafting for the protective provisions to be included in the DCO.

Hornsea Three considers that its preferred drafting is reasonable, proportionate and necessary to ensure that Hornsea Three can be delivered without impediment and to ensure that there will be no serious detriment to Hornsea Three's undertaking as a licence holder under the Electricity Act 1989.

PART 10

For the protection of Orsted Hornsea Project Three (UK) Ltd

1. The provisions of this Part apply for the protection of Orsted unless otherwise agreed in writing between the undertaker and Orsted.

2. In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by Orsted or its successor in title within the Hornsea Three Order limits;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“FLOWW guidance” means any best practice guidance issued by the Fishing Liaison with Offshore Wind and Wet Renewables Group from time to time;

“Hornsea Three authorised project” means the authorised project as defined in the Hornsea Three Order;

“Hornsea Three Order” means the Hornsea Three Offshore Wind Farm Order 2020 (as amended);

“Hornsea Three Order land” means Order land as defined in the Hornsea Three Order;

“Hornsea Three Order limits” means Order limits as defined in the Hornsea Three Order;

“Orsted” means an undertaker with the benefit of all or part of the Hornsea Three Order for the time being;

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed specified works within and/or occupation of the Hornsea Three Order limits;

“proposed Hornsea Three Cable Corridor” means the proposed location for any part of the

Hornsea Three authorised project permitted by the Hornsea Three Order within the Hornsea Three Order limits;

“protective works” means works undertaken or procedures followed by the undertaker which shall include but will not be limited to compliance with relevant guidance documents and any other relevant guidance documents and works including but not limited to the installation of circuits and protective mats;

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission or marine licence intended to operate in conjunction with this Order) (including operations consisting of site clearance, demolition, early planting of landscaping works, archaeological investigations, environmental surveys, ecological mitigation, investigations for the purpose of assessing ground conditions and pre-construction monitoring remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure, the erection of welfare facilities, creation of site accesses and the temporary display of site notices or advertisements) as is—

- (1) in, on, under, over or within 25 metres of any part of the proposed Hornsea Three Cable Corridor or any apparatus located landward of the MHWS;
- (2) in, on, under, over or within 100 metres of any part of the proposed Hornsea Three Cable Corridor or any apparatus located seaward of the MHWS; or
- (3) may in any way adversely affect any apparatus; and

”temporary works” so much of the specified works which are temporary works as including those set out in part 1 and part 2 of Schedule 1 within the Order.

3. The consent of Orsted under this Part is not required where the Hornsea Three Order has expired without the authorised development having been commenced pursuant to paragraph 1 of Part 3 of Schedule 1 to the Hornsea Three Order.

4. Where conditions are included in any consent granted by Orsted pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent,

unless the conditions are waived or varied in writing by Orsted.

5. The undertaker must not under the powers of this Order—

- (1) acquire, extinguish, suspend, override or interfere with any rights that Orsted has in respect of any apparatus or the proposed Hornsea Three Cable Corridor; or
- (2) acquire the Hornsea Three Order land or acquire any new rights or impose restrictive covenants or exercise any powers of temporary use or powers to enter and survey and investigate land over or in relation to the Hornsea Three Order land;

without the consent of Orsted, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

6.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Orsted a plan.

(2) The plan to be submitted to Orsted under sub-paragraph (1) must include a method statement which describes—

- (i) the exact position of the works;
- (ii) the level at which these are proposed to be constructed or renewed;
- (iii) the manner of their construction or renewal including details of excavation, positioning of plant, design details etc. including but not limited to details of separation layers and details of post-installed protection;
- (iv) the position of any part of the Hornsea Three authorised project;
- (v) by way of detailed drawings, every alteration proposed to be made to or close to any of the Hornsea Three authorised project;
- (vi) protective works;
- (vii) any landscaping and/or ecological management plan;
- (viii) any intended maintenance regimes.

- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2)(i) to (vii) apply until Orsted has given written approval of the plan so submitted.
- (4) Any approval of Orsted required under sub-paragraph (3)—
- (i) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
 - (ii) must not be unreasonably withheld.
- (5) In relation to a work to which sub-paragraphs (1) and/or (2)(i) to (vii) apply, Orsted may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing the Hornsea Three authorised project against interference or risk of damage or delay to construction or for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any of the Hornsea Three authorised project including but not limited to scheduling of offshore vessel movements.
- (i) Works to which this paragraph applies must only be executed:
 - (ii) in accordance with the plan submitted under sub-paragraphs (1) and (2)(i) to (vii) and as relevant modified by sub-paragraph (5) or as amended from time to time by a agreement between the undertaker and Orsted;
 - (iii) in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Orsted for the alteration or otherwise for the protection of the Hornsea Three authorised project, or for securing access to it; and
 - (iv) Orsted will be entitled to watch and inspect the execution of those works.
- (6) Any protective works approved pursuant to this paragraph must be carried out to Orsted's satisfaction prior to the commencement of any specified works for which protective works are required and Orsted must give notice of its requirement for such protective works in accordance with sub-paragraph (10) (except in an emergency).
- (7) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any

specified works a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(8) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Orsted notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(9) On receipt of a plan to which sub-paragraphs (1) and (2) apply Orsted must within 42 days serve written notice on the undertaker confirming that:

(i) the plan is approved; or

(ii) the plan is approved subject to reasonable amendments as required by Orsted; or

(iii) the plan is not approved and the reason for the non-approval.

(10) In the event that Orsted fails to serve written notice in accordance with paragraph (10) within 42 days of receipt of the plan to which sub-paragraphs (1) and (2) Orsted shall be deemed to have served a notice pursuant to sub-paragraph 10(i).

7. —(1) The undertaker must give to Orsted not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Orsted written notice of the completion.

(2) The undertaker is not required to comply with paragraph 6 or sub-paragraph (1) in a case of emergency, but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 6 in so far as is reasonably practicable in the circumstances.

8. The undertaker must at all reasonable times during construction of the specified works allow Orsted and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works including but not limited to access for vessels offshore.

9. —(1) After the purpose of any temporary works has been accomplished, the undertaker

must with all reasonable dispatch, or after a reasonable period of notice in writing from Orsted requiring the undertaker to do so, remove the temporary works.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Orsted may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

10. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Orsted to maintain or use the apparatus no less effectively than was possible before the obstruction.

11. The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Orsted to the proposed Hornsea Three Cable Corridor and must not exercise the powers under articles 8 (street works), 10 (temporary stopping up of streets), 11 (temporary stopping up of public rights of way) or 12 (access to works) of this Order over or in respect of the Hornsea Three Cable Corridor otherwise than with the prior written consent of Hornsea Three.

12. To ensure its compliance with this Part, the undertaker must before carrying out any specified works pursuant to this Order request up-to-date written confirmation from Orsted of the location of any apparatus or the proposed Hornsea Three Cable Corridor.

13. The undertaker and Orsted must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

14. The undertaker must pay to Orsted the reasonable expenses incurred by Orsted in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the proposed Hornsea Three Cable Corridor.

15. —(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption to the construction of the Hornsea Three authorised project or any interruption in any service provided, or in the supply of any goods, by Orsted, or Orsted becomes liable to pay any amount to any third

party, the undertaker must—

- (2) bear and pay the cost reasonably incurred by Orsted in making good such damage or restoring the service or supply; and
- (3) indemnify Orsted for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Orsted, by reason or in consequence of any such damage or interruption or Orsted becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Orsted, its officers, servants, contractors or agents.

(3) Orsted must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

- (4) Orsted must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 15 applies. If requested to do so by the undertaker, Orsted shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 15 for claims reasonably incurred by Orsted.

(5) The fact that any work or thing has been executed or done with the consent of Orsted and in accordance with any conditions or restrictions prescribed by Orsted or in accordance with any plans approved by Orsted or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

16. Any dispute arising between the undertaker and Orsted under this Part must unless otherwise agreed in writing between the undertaker and Orsted be determined by arbitration under article 43 (arbitration)..

17. Insofar as the construction of the authorised project gives rise to the need to modify any plan or scheme secured by a requirement contained in Part 3 of Schedule 1 to the Hornsea Three Order,

the undertaker will provide such assistance as is reasonably necessary to support Orsted in pursuing any such modification.

18. Insofar as the construction of the Hornsea Three authorised project gives rise to the need to modify any plan or scheme secured by a requirement contained in Part 1 of Schedule 2 to the Order, Orsted will provide such assistance as is reasonably necessary to support the undertaker in pursuing any such modification.

19. Each notice and all other information required to be sent to Orsted under the terms of this Part must be sent to Orsted at its registered office and marked for the attention of the Hornsea Three Project Manager.

20. Where any offshore works or surveys relating to the authorised project are undertaken concurrently with any offshore works or surveys relating to the Hornsea Three authorised project the undertaker must consult with Orsted and take into account any reasonable representations made by Orsted:

- (1) prior to submitting its mitigation scheme for benthic habitats of conservation, ecological and/or economic importance constituting Annex I reef habitats to the MMO pursuant to paragraph 13(1)(i) of Part 2 of Schedule 10 and/or paragraph 13(1)(i) of Part 2 of Schedule 11 to this Order and/or paragraph 12(1)(j) of Part 2 of Schedule 12 and/or paragraph 12(1)(j) of Part 2 of Schedule 13 in order to ensure that there is no conflict with or adverse impact on any mitigation and/or compensation measures relating to the Hornsea Three authorised project;
- (2) prior to submitting its marine mammal mitigation protocol to the MMO pursuant to paragraph 13(1)(h) of Part 2 of Schedule 10 and/or paragraph 13(1)(h) of Part 2 of Schedule 11 to this Order and/or paragraph 12(1)(i) of Part 2 of Schedule 12 and/or paragraph 12(1)(i) of Part 2 of Schedule 13 in order to ensure that there is no conflict with or adverse impact on any mitigation and/or compensation measures relating to the Hornsea Three authorised project; and
- (3) regarding the timing of such works or surveys and compliance with FLOWW guidance in

order to ensure access for vessels relating to the Hornsea Three authorised project are unhindered and to the minimise impacts on commercial fisheries so far as is practicable.