



# Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

## The Applicant's Comments on Orsted Hornsea Project Three Deadline 7 Submission

**Revision A**

Deadline 8

July 2023

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## **1 The Applicant's Comments on Orsted Hornsea Project Three Deadline 7 Submission**

1. This document presents the Applicant's comments on Orsted Hornsea Project Three Deadline 7 Submission [ref: 08140908\_A].

*Table 1 The Applicant's Comments on Orsted Hornsea Project Three Deadline 7 Submission*

ID	Orsted Hornsea Project Three Comment	Applicant Response
<b>Written Representation</b>		
1	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.	Noted.
2	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].	Noted. The Applicant disagrees that Orsted Hornsea Three would suffer serious detriment and that the protective provisions in Part 10 of Schedule 14 of the <b>DCO (Revision K)</b> [document reference 3.1] more than adequately provide for protection of Orsted Hornsea Three's land and apparatus. Further details are set out below.
3	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.	The Applicant agrees with this statement.
4	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.	Please see Part 10 of Schedule 14 of the <b>draft development consent order (DCO) Revision J</b> [document reference] and a further update made in the <b>DCO (Revision K)</b> [document reference 3.1].
5a	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:	There are some differences between the Applicant's protective provisions for the benefit for Orsted Hornsea Three (see Part 10 of Schedule 14 of the <b>DCO (Revision K)</b> [document reference 3.1]) and the version of protective provisions submitted by Orsted Hornsea Three at Deadline 7 [ref 08140908_A]. Save for as discussed below, these are limited to

ID	Orsted Hornsea Project Three Comment	Applicant Response
	<p>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.</p> <p>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.</p> <p>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.</p>	<p>incorrect paragraph cross referencing in the Orsted Hornsea Three protective provisions.</p>
5b	<p>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.</p>	<p>The Applicant considers paragraph 6(5) which allows Orsted Hornsea Three to impose modifications on the plans submitted for approval under paragraph 6(1) should only allow for Orsted Hornsea Three to restrict the scheduling of vessel movements within their order limits. Allowing this control to extend beyond the Orsted Hornsea Three order limits would be unreasonable given Orsted Hornsea Three would otherwise have no means by which to control the scheduling of vessel movements in this area and this drafting could potentially allow to Orsted Hornsea Three exert control over the scheduling of vessel movements within all of the Sheringham Extension Project's (SEP) and Dudgeon Extension Project's (DEP) Order limits, irrespective of whether there is any overlap in the working areas of offshore vessels.</p>
5c	<p>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</p>	<p>It is not appropriate and would be manifestly unreasonable for the indemnity in the protective provisions to be extended to include the ability for Orsted Hornsea Three to recover from the undertaker costs and expenses arising from 'interruption' to the Orsted Hornsea Three construction as a result of any act of the undertaker. The interpretation of</p>

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	<p>complex and any interruptions to the construction programme could result in significant delays and financial consequences.</p>	<p>this provision could be extremely broad and the undertaker will be entirely at the mercy of Orsted Hornsea Three with regards to what is considered an <i>'interruption'</i> to construction. This includes circumstances which are entirely outside of the control of the undertaker. For example, if human remains are discovered in the SEP and DEP onshore cable corridor and this leads to an <i>'interruption'</i> of Orsted Hornsea Three's construction then the undertaker will be liable to pay for all costs arising from an event that is entirely outside of their control and where a collaborative approach should be taken by the two NSIP projects. The financial implications of this indemnity could be extremely significant for the development of SEP and DEP and the Applicant strongly resists the inclusion of the Orsted Hornsea Three protective provisions drafting on this basis. The Applicant notes that it is equally a NSIP and as far as the undertaker is aware no DCO developer has had such unreasonable protective provisions imposed on them. The Applicant believes doing so would set a dangerous precedent for future NSIP applications given the likely number of projects with overlapping construction periods and locations coming forward in the future.</p> <p>Further, the Applicant disagrees that this is a matter for consideration in respect of a <i>'serious detriment'</i> impact on Orsted Hornsea Three. Sections 127 and 138 of the Planning Act 2008 are related to whether a statutory undertaker would suffer <i>'serious detriment'</i> arising from the compulsory acquisition of land or apparatus of a statutory undertaker. The protective provisions in Part 10 of Schedule 14 of the <b>DCO (Revision K)</b> [document reference 3.1] more than adequately provide for protection of Orsted Hornsea Three's land and apparatus. This includes the approval of plans for works in paragraph 6, inspection of those works in paragraph 8, continued provision of access for Orsted Hornsea Three under paragraph 10, restriction of access by the undertaker to Orsted Hornsea Three land without their consent in paragraph 11 and the indemnity for any damage caused to Orsted Hornsea Three apparatus or any interruption to provision of Orsted Hornsea Three's service under paragraph 15. Including the suggested drafting would, as described above, result in potential</p>

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		significant impacts on the undertaker without being required to comply with the section 127 and section 138 tests.
5d	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.	<p>In relation to Orsted Hornsea Three protective provisions, paragraph 20, the Applicant does not consider that it is appropriate for provisions like these to be included in protective provisions on the face of the DCO. The Applicant is not necessarily opposed to sharing information with Orsted Hornsea Three regarding benthic mitigation but considers these are matters which the parties should agree between themselves as part of general industry collaboration rather than forming part of protective provisions to be imposed on the undertaker. The Applicant is already engaging in discussions with Orsted Hornsea Three on the basis of a collaborative approach between the parties with regards to sharing of information on offshore matters.</p> <p>In relation to Orsted Hornsea Three protective provisions, paragraph 20(2), the Applicant considers that the sharing of information with Orsted Hornsea Three with regards to the marine mammal protocol would have no beneficial outcomes from a marine mammals perspective. As such the imposition of protective provisions would be redundant.</p> <p>The final marine mammal mitigation protocol (MMMP) will set out the mitigation to reduce the likelihood of any injury, including any permanent threshold shift (PTS), to marine mammals during all piling operations at SEP and DEP (the same is addressed in the draft MMMP for unexploded ordnance clearance but for information purposes only at this stage as per the standard approach).</p> <p>The aim of the MMMP for piling is to reduce the risk of PTS during piling for either wind turbine or offshore platform foundations.</p> <p>The maximum potential PTS ranges will be derived by updated underwater noise modelling post-consent, however the requirement in the MMMP will be for the establishment of a monitoring area (MA) with a minimum radius of 500m around each wind turbine location and OSP location before piling at the Sheringham Extension Project (SEP) and Dudgeon Extension Project (DEP). The radius of the MA will be greater than the maximum predicted impact range for PTS for marine mammal species that could be</p>



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		<p>present in or around the SEP and DEP wind farm sites. The requirement for a minimum radius of 500m is in line with the current JNCC (2010b) guidelines, to reduce the risk of PTS.</p> <p>Within the current underwater noise modelling (as presented within ES Appendix 10.2 Underwater Noise Modelling (APP-192)), the maximum PTS range is predicted to be 510m at DEP, and 570m at SEP (for the worst-case WTG foundation installation), and for the worst-case OSP foundation installation, the maximum PTS range is predicted to be 440m at DEP, and 490m at SEP. All worst-case PTS ranges were predicted for harbour porpoise, with other species groups having lower PTS ranges. Based on these current underwater noise modelling results, the MA would be increased to 600m for WTG foundation installations, and would remain at the minimum required of 500m for OSP foundation installations.</p> <p>The Orsted Hornsea Three array at its nearest point is 83km from SEP/DEP array.</p> <p>In relation to Orsted Hornsea Three protective provisions, paragraph 20(3), the Applicant is already committed to reducing impacts on commercial fisheries and, further, has already stated in paragraph 28 of the Outline Fisheries Liaison and Co-existence Plan [APP-295] that '<i>[t]he Applicants compensation strategy is in line with the FLOWW Best Practice Guidance for Offshore Renewables Developments: Recommendations for Fisheries Liaison</i>'. Compliance with this plan is secured in Condition 13(1)(d)(v) of Schedules 10 and 11 and Condition 12(1)(d)(v) of Schedules 12 and 13 the <b>draft DCO (Revision K)</b> [document 3.1]. A requirement of this kind in the protective provisions is therefore unnecessary. Further, the Applicant does not think it appropriate for the undertaker to consult with Orsted Hornsea Three in relation to compliance with FLOWW Guidance given the Applicant is already committed to complying with the FLOWW Guidance and any representations of Orsted Hornsea Three in relation to that position would be irrelevant.</p> <p>The absence of these provisions from Part 10 of Schedule 14 cannot result in a 'serious detriment' case being argued by Orsted Hornsea Three given section 127 and section 138 of the Planning Act 2008 relate to land only and these are offshore matters. There is currently no policy basis on</p>

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		<p>which Orsted Hornsea Three can require provisions be included on the face of the SEP DEP DCO. Although the Applicant notes that draft National Policy Statement EN3 provides further drafting in relation to the policy on 'other offshore infrastructure' by noting that offshore wind developers should work '<i>collaboratively with... other developers and sea users on... shared mitigation, compensation and monitoring where appropriate</i>' (paragraph 3.8.54 and 3.8.58). The Applicant supports this statement but understands that Orsted Hornsea Three are seeking to impose unilateral obligations on the undertaker in this case which does not represent collaboration and is not therefore compliant with policy 3.8.54 and 3.8.58. Further, this should not form a statutory obligation on the undertaker where no other offshore wind farm developers have been required to comply with such obligations either through requirements, conditions or protective provisions.</p>
6	<p>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.</p>	<p>The Applicant confirms that agreement has not been reached and refers to the <b>Statutory Undertakers Position Statement (Revision E)</b> [document 12.46] and the <b>Joint Statement between Orsted and Equinor</b> [document 22.29].</p>
7	<p>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.</p>	<p>The Applicant disagrees for the reasons set out above. In the event that the Examining Authority is minded to impose protective provisions for the benefit of Orsted Hornsea Three, and recommends this to the Secretary of State, the Applicant requests the opportunity to be consulted on the proposed drafting of such protective provisions.</p>