

Submission ID: 6333

Application by National Highways for an Order granting Development Consent for the A47 North Tuddenham to Easton

Negotiations are ongoing with National Highways on the A47 North Tuddenham to Easton scheme. However, in the absence of an agreement or agreed Statement of Common Ground, Hornsea Project Three Offshore Wind Farm is seeking protective provisions to be included in the A47 North Tuddenham to Easton Development Consent Order to ensure that Hornsea Three can be delivered without impediment.

SCHEDULE 9

PROTECTIVE PROVISIONS

PART 5

FOR THE PROTECTION OF ØRSTED

1. The provisions of this Part apply for the protection of Ørsted or any undertaker with the benefit of all or part of the Hornsea Three Order for the time being unless otherwise agreed in writing between the undertaker and Ørsted.

2. In this Part—

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

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

“Crossing Area” means the land within land parcels [15/2g, 15/2d, 15/3a, 15/3b, 15/3c, 15/4c, 15/4e, 15/5b, 15/6a, 15/7a, 15/11a, 16/1a, 16/1c, 16/2a, 16/3c, 19/2a and 19/3a] shown on the land plans and described in the book of reference;

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

“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 occupation of the Hornsea Three Order land;

“proposed Hornsea Three Access” means the proposed location of the access from Church Lane to the proposed Hornsea Three Cable Corridor permitted by the Hornsea Three Order within the Hornsea Three Order land;

“proposed Hornsea Three Cable Corridor” means the proposed location for any electrical circuit(s) and construction compound(s) permitted by the Hornsea Three Order within the Hornsea Three Order land; and

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the Crossing Area;
- (b) in, on, under, over or within 25 metres of the proposed Hornsea Three Cable Corridor or the proposed Hornsea Three Access or any apparatus; or
- (c) may in any way adversely affect any apparatus.

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

4. Where conditions are included in any consent granted by Ørsted 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 Ørsted.

5. Insofar as the construction of the authorised development gives rise to the need to modify or amend any plan or scheme secured by a requirement contained in Part 3 of Schedule 1 to the Hornsea Three Order, the undertaker must provide such assistance as is reasonably necessary to support Ørsted in pursuing any such modification or amendment.

6. Within 14 days of receipt of written notice from Ørsted to the undertaker requesting the transfer of the benefit of the provisions of this Order and such related statutory rights for the purposes of undertaking Work Nos. 94 and/or 99, the undertaker must transfer the benefit of the provisions of this Order and such related statutory rights specified in the notice to Ørsted by way of a deed of transfer in such form as Ørsted may reasonably require.

7. The undertaker must not submit any plans or details to the Secretary of State or the relevant planning authority in accordance with any requirement in Schedule 2 of this Order (including but not limited to Requirement 4 (Environmental Management Plan) and the EMP (Second Iteration), Requirement 5 (Landscaping), Requirement 6 (Contaminated land and groundwater), Requirement 8 (Surface water drainage), Requirement 10 (Traffic management) and Requirement 11 (Fencing)), or any amendments to any plans or details in accordance with requirement 14 of Schedule 2 of this Order, in respect of Work Nos. 69, 70, 72, 92, 93, 94 or 99 without having first obtained the written approval of Ørsted, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

8. The undertaker must not exercise powers pursuant to articles 12 (construction and maintenance of new, altered or diverted streets and other structures), 14 (power to alter layout etc. of streets), 15 (street works) or 16 (temporary alteration, diversion, prohibition and restriction of use of streets), 17 (permanent stopping up and restriction of use of streets and private means of access), 18 (access to works), 20 (traffic regulation) or 23 (authority to survey and investigate the land) of this Order over land within the Hornsea Three Order land without first obtaining the written consent of Ørsted, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

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

- (a) acquire, extinguish, suspend, override or interfere with any rights that Ørsted has in respect of any apparatus or the proposed Hornsea Three Cable Corridor or the proposed Hornsea Three Access; or
- (b) acquire the Hornsea Three Order land or acquire any new rights or impose restrictive covenants or exercise any powers of temporary use over or in relation to the Hornsea Three Order land; or
- (c) acquire land or acquire any new rights or impose restrictive covenants or exercise any powers of temporary use over or in relation to Work No. 94 and/or Work No. 99

without the consent of Ørsted, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions including but not limited to the grant of new facilities and rights in land to Ørsted for the construction, use, maintenance and protection of apparatus or access provided that such facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Ørsted and must be no less favourable on the whole to Ørsted than the facilities and rights enjoyed by it in respect of any apparatus or the proposed Hornsea Three Cable Corridor or the proposed Hornsea Three Access unless otherwise agreed by Ørsted.

10.—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Ørsted, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Ørsted for approval and must submit such further particulars available to it that Ørsted may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Ørsted.

(4) Any approval of Ørsted required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus or the proposed Hornsea Three Cable Corridor or the proposed Hornsea Three Access or for securing access to any apparatus or the proposed Hornsea Three Cable Corridor;

(5) Where Ørsted requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Ørsted's reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph must apply to and in respect of the new plans.

11.—(1) The undertaker must give to Ørsted not less than 56 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 Ørsted written notice of the completion.

(2) The undertaker is not required to comply with paragraph 10 or sub-paragraph (1) in a case of emergency works, but in that case it must give to Ørsted 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 10 in so far as is reasonably practicable in the circumstances.

(3) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

12. The undertaker must at all reasonable times during construction of the specified works allow Ørsted and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

13.—(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 Ørsted requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Crossing Area.

(2) If the undertaker fails to remove the temporary works within 14 days (or such other period as may be agreed by Ørsted acting reasonably) of receipt of a notice pursuant to sub-paragraph (1), Ørsted may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

14. 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 Ørsted to maintain or use the apparatus no less effectively than was possible before the obstruction.

15. The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Ørsted to the proposed Hornsea Three Cable Corridor or the proposed Hornsea Three Access without the consent of Ørsted, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions including but not limited to a condition requiring the construction of Work No. 99 to be completed to Ørsted's reasonable satisfaction and the grant of new facilities and rights in land to Ørsted for access to be granted prior to any interference with access to the proposed Hornsea Three Access.

16. To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within the Crossing Area request up-to-date written confirmation from Ørsted of the location of any apparatus or the proposed Hornsea Three Cable Corridor or the proposed Hornsea Three Access.

17. The undertaker and Ørsted 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 taking into account the interests of safety and the efficient and economic construction of Hornsea Three.

18. Insofar as the construction of the authorised development is or may be undertaken concurrently with the construction of Hornsea Three, the undertaker must—

(1) (a) co-operate with Ørsted with a view to ensuring—

- (i) the co-ordination of construction programming and the carrying out of works; and
- (ii) that the detailed design for the parts of the authorised development within the Hornsea Three Order land is provided to Ørsted at the earliest opportunity and no later than 8 months prior to the commencement date for the construction of Hornsea Three within the Crossing Area (such commencement date to be notified by Ørsted to the undertaker);

(ii) that access for the purposes of constructing and maintaining the authorised development and Hornsea Three is maintained for the undertaker and Ørsted and their respective contractors;

(b) use reasonable endeavours to avoid any conflict arising between the carrying out of the authorised development and Hornsea Three.

19. The undertaker must pay to Ørsted the reasonable costs and expenses incurred by Ørsted in connection with the construction of Work No. 99, approval of plans, survey of land, inspection of any specified works or the alteration or protection of any apparatus or the proposed Hornsea Three Cable Corridor or the proposed Hornsea Three Access including but not limited to any costs reasonably incurred by or compensation properly paid by Ørsted in connection with the acquisition of rights or the exercise of statutory powers for such apparatus or access including without limitation all costs incurred by Ørsted as a consequence of Ørsted exercising any temporary use powers or compulsory acquisition powers in the Order transferred to or benefitting Ørsted.

20.—(1) Subject to sub-paragraphs (2) and (2), 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 in any service provided, or in the supply of any goods, by Ørsted, or there is any interruption or delay caused to the construction of Hornsea Three or Ørsted becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Ørsted in making good such damage or restoring the service or supply; and
- (b) compensate Ørsted for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Ørsted, by reason or in consequence of any such damage or interruption or Ørsted 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 Ørsted, its officers, servants, contractors or agents.

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

(4) Ørsted must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 20 applies. If requested to do so by the undertaker, Ørsted must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 20 for claims reasonably incurred by Ørsted.

(5) The fact that any work or thing has been executed or done with the consent of Ørsted and in accordance with any conditions or restrictions prescribed by Ørsted or in accordance with any plans approved by Ørsted 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.

21. Any dispute arising between the undertaker and Ørsted under this Part must be determined by arbitration under article 53 (arbitration) in accordance with the Arbitration Rules at Schedule 13 of the Hornsea Three Order.