

From: [Leigh, Gareth \(Energy Development & Resilience\)](#)
To: [Francesca De Vita; Thompson, Alexander \(Energy Development & Resilience\)](#)
Cc: [Karma Leyland; Simon Fox](#)
Subject: RE: Hornsea Project Three - EN10080 [DLGL-20-6585]
Attachments: [image001.png](#)
[image005.png](#)
[image006.png](#)

Dear Francesca

Thank you for your email and attached documents. The Secretary of State does not require any further comments on this matter at this time.

Best regards
Gareth



Gareth Leigh
Head of Energy Infrastructure Planning
Tel: 0300 068 5677
gareth.leigh@beis.gov.uk
1 Victoria Street, London SW1H 0ET
www.gov.uk/beis | <https://twitter.com/beisgovuk>

From: Francesca De Vita <FRADV@orsted.co.uk>
Sent: 10 September 2020 15:21
To: Leigh, Gareth (Energy Development & Resilience) <Gareth.Leigh@beis.gov.uk>; Thompson, Alexander (Energy Development & Resilience) <Alexander.Thompson@beis.gov.uk>
Cc: Karma Leyland <KALEY@orsted.co.uk>; Simon Fox <SIMFO@orsted.co.uk>
Subject: Hornsea Project Three - EN10080 [DLGL-20-6585]

Dear Gareth

I attach the following in response to the letter from Kellas Midstream dated 6th April 2020:

1. Joint response on behalf of Orsted Hornsea Project Three and Kellas North Sea 2 Limited;
2. Agreement in Principle dated 20th July 2017; and
3. Hornsea Three Response to Representation.

I would be grateful if you could acknowledge receipt and confirm that the Secretary of State requires no further comments from the Applicant.

Best regards
Francesca

Best regards,
Francesca De Vita
Lead Legal Counsel
Legal Offshore CE & UK
Group Support



Learn more at orsted.co.uk

5 Howick Place, Westminster
SW1P 1WG London
United Kingdom
[REDACTED]

fradv@orsted.co.uk
orsted.co.uk



Please consider the environment before printing this e-mail

This communication contains information which is confidential and is for the exclusive use of the addressee(s).

If you are not a named addressee, please inform the sender immediately and also delete the communication from your system.

Orsted (UK) Limited is registered in England
Registered number: 06730824
Registered Address: 5 Howick Place, London, SW1P 1WG
The Company is a wholly owned subsidiary of Orsted A/S (a company registered in Denmark)
More information on the business of the Orsted group can be found at www.orsted.com
Disclaimer version 1.1

From: [Leigh, Gareth \(Energy Development & Resilience\)](#)
To: [Francesca De Vita; Thompson, Alexander \(Energy Development & Resilience\)](#)
Cc: [Karma Leyland; Craig Harwood; Libretto, Denise \(Energy Development & Resilience\)](#)
Subject: RE: Hornsea Project Three - EN10080
Attachments: [image001.png](#)
[image003.png](#)
[image004.png](#)

Dear Francesca

Re: The level of information the Applicant should provide to the Secretary of State in relation to the funding of the proposed compensation measure

Thank you for your enquiry regarding the above. You ask for clarification on two points which I address below:

1. **Funding of compensation measures** – As you state in your email, the Applicant will need to demonstrate that to the Secretary of State that funding is available to carry out the proposed compensation measures. If this funding is likely to be within the original cost estimate of the Project, then sufficient information would need to be submitted to corroborate this position.
2. **Commercially sensitive information** – I note your concerns about the commercial sensitivity of the exact location of the proposed compensation site. In order to satisfy obligations under the Aarhus Convention, the Secretary of State must allow Interested Parties and SNCBs the opportunity to comment on the proposed compensation measures. Therefore, while we are content that the exact location of the compensation site may be redacted, enough information on the relevant environmental characteristics of the site should be publicly available in order that Interested Parties can give an informed response to the consultation. The Applicant should also indicate when it expects that the information in respect of the site's location to no longer be commercially sensitive.

Best regards
Gareth



Gareth Leigh
Head of Energy Infrastructure Planning
Tel: 0300 068 5677
gareth.leigh@beis.gov.uk
1 Victoria Street, London SW1H 0ET
www.gov.uk/beis | <https://twitter.com/beisgovuk>

From: Francesca De Vita <FRADV@orsted.co.uk>
Sent: 11 September 2020 17:11
To: Leigh, Gareth (Energy Development & Resilience) <Gareth.Leigh@beis.gov.uk>; Thompson, Alexander (Energy Development & Resilience) <Alexander.Thompson@beis.gov.uk>
Cc: Karma Leyland <KALEY@orsted.co.uk>; Craig Harwood <CRHAR@orsted.co.uk>; Libretto, Denise (Energy Development & Resilience) <Denise.Libretto@beis.gov.uk>
Subject: RE: Hornsea Project Three - EN10080

Dear Gareth

I am writing on behalf of the Applicant to seek further clarity in relation to the following:

The level of information the Applicant should provide to the Secretary of State in relation to the funding of the proposed compensation measure.

It is understood that BEIS planning is broadly aligned with the Applicants proposal to identify the estimated costs associated with each measure and the intention to demonstrate how it will be funded in broad terms. The Applicant intends to include a statement similar to the Funding Statement submitted as part of the original Application. The current cost estimate for Hornsea Three is approximately £5-8 billion. It is anticipated that the cost of the compensation measure will fall within this cost estimate. The project company for Hornsea Three is a special purpose vehicle and it is anticipated that the project will be funded by the project company's parent company.

It is the intention of the Applicant to identify the costs associated with the development, construction and operation of the compensation measure. For example development costs would include; consents; design; ground investigation; land and property and monitoring. These individual costs will not be provided but rather an overall estimate of costs. This is partly due to the commercial sensitivity of attributing a cost to the acquisition of land.

Is there broad alignment as to the Applicants intention to demonstrate that the compensation measure will be funded with reference to the original cost estimate for the project subject to inclusion of the costs associated with the various stages of the compensation measure?

1. The provision of commercially sensitive information.

The Applicant is aware of the need to provide a sufficient level of information to give the Secretary of State confidence that the compensation measure can be secured. The Applicant has taken steps in order to progress the compensation measure, particularly relating to the identification of a suitable location that is considered by the Applicant as commercially sensitive. The Applicant would propose therefore to provide, if necessary, confidential information to the Secretary of State in order that he is able to make a rational decision. There is precedent for redacting reports however the Applicant would be grateful to receive clarification as to how BEIS would treat the submission of information that has been identified by the Applicant as confidential and/or commercially sensitive.

The Applicant acknowledges that the Secretary of State may be subject to FOI/EIR requests.

Thank you for your assistance.

Best regards
Francesca

Best regards,
Francesca De Vita
Lead Legal Counsel
Legal Offshore CE & UK
Group Support

Ørsted


From: Leigh, Gareth (Energy Development & Resilience) <Gareth.Leigh@beis.gov.uk>
Sent: 03 August 2020 13:27
To: Francesca De Vita <FRADV@orsted.co.uk>; Thompson, Alexander (Energy Development & Resilience) <Alexander.Thompson@beis.gov.uk>
Cc: Karma Leyland <KALEY@orsted.co.uk>; Craig Harwood <CRHAR@orsted.co.uk>; Libretto, Denise (Energy Development & Resilience) <Denise.Libretto@beis.gov.uk>
Subject: RE: Hornsea Project Three - EN10080

Dear Francesca

Thank you for email of 29 July 2020 regarding the Secretary of State's letter of 1 July 2020 in respect of the application for development consent for the Hornsea Project Three offshore wind farm.

In terms of the approach outlined in your email, and without prejudice to final decision on its acceptability which remains a matter for the Secretary of State, the planning team at BEIS have no in-principle objections to your proposal. You will understand that it is not possible to offer any more definitive opinion in the absence of the detailed Compensation Plan designed to offset the impact to the kittiwake feature of the Flamborough and Filey Coast SPA and thereby maintain the coherence of the network of SPAs designated, at least in part, for kittiwake.

We would therefore urge Orsted to work closely with Natural England, the Secretary of State's statutory advisor on nature conservation, on the measures to be contained in the Compensation Plan and look forward to receiving details of the Plan by 30 September 2020.

This email is without prejudice to the Secretary of State's decision whether or not to grant development consent for the Hornsea Project Offshore offshore wind farm, and nothing in this email is to be taken to imply what that decision might be or what final conclusions the Secretary of State may reach on any particular issue which is relevant to the determination of the application.

Best regards
Gareth



Gareth Leigh
Head of Energy Infrastructure Planning
Tel: 0300 068 5677
gareth.leigh@beis.gov.uk
1 Victoria Street, London SW1H 0ET
www.gov.uk/beis | <https://twitter.com/beisgovuk>

From: Francesca De Vita <FRADV@orsted.co.uk>
Sent: 29 July 2020 17:57
To: Thompson, Alexander (Energy Development & Resilience) <Alexander.Thompson@beis.gov.uk>
Cc: Leigh, Gareth (Energy Development & Resilience) <Gareth.Leigh@beis.gov.uk>; Karma Leyland <KALEY@orsted.co.uk>; Craig Harwood <CRHAR@orsted.co.uk>
Subject: Hornsea Project Three - EN10080

Alexander

I am writing further to the Minded to Approve Letter dated 1 July 2020 wherein the Secretary of State ("SoS") confirmed that he is minded to grant consent for the Hornsea Project Three Offshore Wind Farm subject to the Applicant providing sufficient evidence that appropriate compensation measures have been secured. I am seeking broad alignment to the approach outlined below.

Introduction

The Applicant provided the SoS with a kittiwake compensation strategy as part of its submission dated 20th February 2020. That strategy identified mammalian predator eradication, at a location to be determined, as the proposed compensation option for adverse effects on kittiwake. It has been noted that there was no negative commentary from the SoS on the proposed DCO condition or the proposed timing of delivery of the compensation measures.

Instead the commentary from the SoS focused upon:

1. Lack of agreement “in principle” with SNCB’s on the feasibility of the measure identified by the Applicant and “significant potential obstacles” to implementation.
2. Lack of an evidence base stating that “robust evidence” would be needed to be provided to demonstrate that kittiwakes benefit.
3. Lack of agreement or a pathway to agreements. The SoS noted that the strategy does not specify “an approach for securing agreements for land access”

Brief legal analysis on the meaning of “Secure” and the meaning of “Delivery”.

The law requires the SoS to ensure that compensation measures are secured or to be confident that they can be secured at the point of authorising the relevant project. It does not state when those measures must be secured or that they must be secured before the related harm arises. There is an important distinction between securing the compensation measures and its subsequent delivery.

As you are aware the Habitats Directive 92/43/EEC, the Conservation of Offshore Marine Habitats and Species Regulations 2017 and the Conservation of Habitats and Species Regulations 2017 (“the Regulations”) do not expand on what is meant by “secured”. In light of this, the Applicant has had regard to relevant case law and specifically the case of *Humber Sea Terminals v Secretary of State for Transport [2006] Env. L. R. 4*. From this case the Applicant has drawn the following

1. It is not necessary for there to be a binding agreement in place for delivery of compensation before consent is issued.
2. The question is whether the SoS could rationally believe that he could fulfil his duty to secure compensation measures, or could he only rationally conclude that he would be unable to fulfil it.
3. The SoS has the power to issue the consent if he can rationally believe that the mechanism for delivery of compensation would be implemented. In that, the SoS is entitled to rely on the advice of Natural England.
4. The timing of the measures to be secured depends on the timing of the events which would detract from the coherence of the network (i.e. when the impact occurs)

The legal position on timing of delivery of compensation measures was confirmed by the SoS in relation to the *Able Marine Energy Park Order 2013*. Two key principles arising from this decision are: (i) it is accepted that the compensation does not need to be delivered before any development commences; and (ii) it countenances a time-lag where there is damage/harm to the European Site, with compensation only fully functioning later. Additional compensation is required to account for interim losses.

The Applicants proposed approach to providing the SoS with sufficient confidence that the compensation measures are secured or can be secured at the point of authorising the Hornsea Three Project Three Offshore Wind Farm.

Having regard to the following:

1. The Regulations
2. Principle guidance documents including Defra 2012 Guidance and EC 2018 Managing Natura 2000 sites (“the Guidance”);
3. Planning Inspectorates Advice Note Ten;
4. Tyldesley and Chapman’s Habitats Regulations Assessment (HRA) Handbook;
5. The SoS’s commentary in the Minded to Approve Letter; and
6. The principles drawn from relevant case law and DCO decisions;

the Applicant sets out below the areas it proposes to address against each compensation measure it has identified. **The Applicant is seeking broad alignment to the approach set out below and assistance in identifying whether there are any other deliverables that the BEIS planning team would like the Applicant to address in order to make their recommendation.**

To be clear the Applicant is currently considering a number of compensation measures and may conclude that it is necessary to present a suite of compensation measures, rather than focus upon one measure. In order to provide the SoS with sufficient confidence that the compensation measures are secured or can be secured at the point of authorising Hornsea Project Three the Applicant has identified the areas below and added some brief commentary.

1. Agreement in principle with Natural England

It is the Applicants primary objective to reach agreement in principle with Natural England on the feasibility of the compensation measure identified. Agreement in principle with Natural England and an evidence base would provide the SoS with a rational basis upon which to make his decision.

2. Evidence

The intention is to submit sufficient evidence to inform and agree compensatory measures using reasonable metrics on numbers of birds to realise 65 to 72 birds/year. Reference will be made to the criteria in the Guidance. The Guidance recognises that the feasibility of the identified compensation measure must be based on best scientific knowledge available. It must be recognised that there are uncertainties across all proposed compensation measures. The Applicant will carry out a robust evidence gathering process and through the implementation of the measure together with detailed monitoring, further evidence on effectiveness will be provided.

3. Timescale for Delivery

It has been noted that there was no negative commentary relating to the timescale for implementation of the compensation measure in the Minded to Approve letter dated 1 July 2020. In line with the previous submission the Applicant intends to submit a compensation plan setting out the timetable for implementation prior to installation of the turbines. The Applicant is aware that the intention should ideally be for the compensation to be operational at the time the damage occurs. Where that cannot be fully achieved, overcompensation is likely to be required for interim losses as expressed in the Abel decision.

4. Monitoring

The Applicant notes that the Guidance requires a detailed monitoring programme during implementation to ensure the effectiveness of the measure in the long term should be included. The monitoring could lead to modification of the measure. In addition the Applicant hopes to identify any delivery partners who may be in a position to assist with monitoring through the lifetime of the project. It is envisaged that the Applicant would secure adaptive monitoring for the lifetime of the project. The Applicant would submit a draft DCO condition precluding commencement of any works until proposals for monitoring and reporting on their effectiveness has been approved.

5. Land/Seabed and Compulsory Acquisition.

The Applicant will present a land acquisition strategy. Due to the time constraints the Applicant will not be in a position to provide agreements in principle with landowners in relation, for example, with onshore sites for nesting structures. The strategy will be clear on the steps to be taken to reach agreement and whether it is possible to rely upon compulsory acquisition powers. The Applicant is engaging with the Crown Estate in respect of offshore areas of seabed and will include a pathway to exclusivity should appropriate offshore sites be identified. The Applicant would submit a draft DCO condition precluding commencement of any works until proposals for the location of, for example, onshore nesting sites, had been approved. **The Applicant would appreciate specific guidance as to whether BEIS planning align with the Applicants view that a pathway to agreements would be sufficient for a recommendation to be made to the SoS.**

6. Design/Construction

Where onshore sites are identified, surveys will need to be undertaken to inform FEED studies for any proposed structures. The Applicant will present a design and construction strategy that will include the surveys needed to inform the design and any construction methodologies. In the context of onshore and offshore nesting structures, the Applicant can identify existing structures and demonstrate how these can be adapted to accommodate Kittiwake. Where no structure exists, the Applicant may need to demonstrate proof of concept. It may be possible to provide an outline construction plan but the content would be high level and dependent upon the outcome of any surveys. The Applicant would submit a draft DCO condition precluding commencement of any works until details of design has been approved.

7. Delivery Mechanism

The Applicant will submit a proposed condition to include within a Schedule to the DCO to secure the identified compensation measures. It is recognised that additional consents will be needed to deliver the compensation. Once again the Applicant will submit a strategy outlining the necessary consents and the steps required to obtain those consents. The Applicant shall develop a consultation strategy in line with the requirements for any necessary consents.

8. Funding

The Applicant proposes to identify the estimated costs associated with each measure and demonstrate how each measure will be funded. It is envisaged that this document will be similar to the Funding Statement submitted in support of compulsory acquisition.

I would be grateful to receive confirmation that you are broadly aligned with the above approach. I would also be grateful for any additional points that you may wish to see addressed as part of the Applicants submission.

If you would prefer to discuss then I can arrange a call at your earliest opportunity.

Thank you

Best regards
Francesca

Best regards,
Francesca De Vita
Lead Legal Counsel
Legal Offshore CE & UK
Group Support



Learn more at orsted.co.uk

5 Howick Place, Westminster
SW1P 1WG London
United Kingdom
[REDACTED]

fradv@orsted.co.uk
orsted.co.uk



Please consider the environment before printing this e-mail

This communication contains information which is confidential and is for the exclusive use of the addressee(s).

If you are not a named addressee, please inform the sender immediately and also delete the communication from your system.

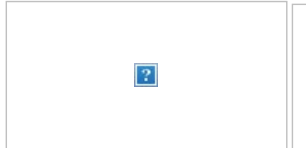
Orsted (UK) Limited is registered in England
Registered number: 06730824
Registered Address: 5 Howick Place, London, SW1P 1WG
The Company is a wholly owned subsidiary of Orsted A/S (a company registered in Denmark)
More information on the business of the Orsted group can be found at www.orsted.com
Disclaimer version 1.1

From: [Leigh, Gareth \(Energy Development & Resilience\)](#)
To: [Francesca De Vita; Thompson, Alexander \(Energy Development & Resilience\)](#)
Cc: [Karma Leyland; Libretto, Denise \(Energy Development & Resilience\); Johansson, KJ](#)
Subject: RE: SI Compliant Version of the Secretary of States DCO Hornsea 3 EN10080
Attachments: [image001.png](#)
[image003.png](#)
[image004.png](#)

Dear Francesca

We would be grateful if you could provide a separate draft schedule of compensation provisions for the Secretary of State's consideration.

Best Regards
Gareth



Gareth Leigh
Head of Energy Infrastructure Planning
Tel: 0300 068 5677
gareth.leigh@beis.gov.uk
1 Victoria Street, London SW1H 0ET
www.gov.uk/beis | <https://twitter.com/beisgovuk>

From: Francesca De Vita <FRADV@orsted.co.uk>
Sent: 18 September 2020 13:15
To: Leigh, Gareth (Energy Development & Resilience) <Gareth.Leigh@beis.gov.uk>; Thompson, Alexander (Energy Development & Resilience) <Alexander.Thompson@beis.gov.uk>
Cc: Karma Leyland <KALEY@orsted.co.uk>; Libretto, Denise (Energy Development & Resilience) <Denise.Libretto@beis.gov.uk>; KJ Johansson <KJ.JOHANSSON@planninginspectorate.gov.uk>
Subject: SI Compliant Version of the Secretary of States DCO Hornsea 3 EN10080

Dear Gareth

I am writing on behalf of the Applicant to request an SI compliant version of the Secretary of States' Minded to Approve Development Consent Order. It is the Applicants intention to update the DCO with a schedule of the proposed compensation provisions.

If you are unable to share an SI compliant version, the Applicant would propose to provide a separate draft schedule of compensation provisions.

I look forward to hearing from you.

Best regards
Francesca

Best regards,
Francesca De Vita
Lead Legal Counsel
Legal Offshore CE & UK
Group Support



Learn more at orsted.co.uk

5 Howick Place, Westminster
SW1P 1WG London
United Kingdom

fradv@orsted.co.uk
orsted.co.uk



Please consider the environment before printing this e-mail

This communication contains information which is confidential and is for the exclusive use of the addressee(s).

If you are not a named addressee, please inform the sender immediately and also delete the communication from your system.

Orsted (UK) Limited is registered in England

Registered number: 06730824

Registered Address: 5 Howick Place, London, SW1P 1WG

The Company is a wholly owned subsidiary of Orsted A/S (a company registered in Denmark)

More information on the business of the Orsted group can be found at www.orsted.com

Disclaimer version 1.1