



Pinsent Masons

BY E-MAIL

Secretary of State for Business, Energy and
Industrial Strategy
Energy and Infrastructure Planning
1 Victoria Street
London
SW1H 0ET

8 November 2022

Dear Secretary of State

PROPOSED NON-MATERIAL CHANGE APPLICATION – THE HORNSEA THREE OFFSHORE WIND FARM ORDER 2020

1. INTRODUCTION

- 1.1 We act for Orsted Hornsea Project Three (UK) Limited ("**Orsted**").
- 1.2 On 31 December 2020, the Secretary of State made the Hornsea Three Offshore Wind Farm Order 2020 (the '**Order**') in respect of an offshore wind farm in the North Sea, approximately 121 kilometres to the northeast of the north Norfolk coast and approximately 10 kilometres west of the median line between UK and Netherlands waters.

2. NON-MATERIAL CHANGES TO THE HORNSEA THREE DCO

- 2.1 The Order requires Orsted to construct four artificial nesting structures ("**ANS**") for kittiwake along the English east coast, as a compensation measure for the potential impacts of the Hornsea Three Offshore Windfarm ("**Hornsea Three**"). Paragraph 3(c) of Part 1 of Schedule 14 of the Order requires four structures to be in place four full breeding seasons before Hornsea Three becomes operational. The focus of the proposed non-material change is to shorten the length of time the ANS need to be in place before operation, to allow time for necessary rights for the construction of the ANS to be obtained without impacting the programme for the operation of Hornsea Three and its provision of renewable energy to the National Grid. Discussions have been held with the Marine Management Organisation ("**MMO**"), Natural England ("**NE**") and the Royal Society for the Protection of Birds ("**RSPB**") at the Offshore Ornithological Engagement Group ("**OOEG**") Steering Group meeting held on 3rd October 2022 and no objections were raised with regards to the wording of the non-material change detailed at paragraph 2.3 below.
- 2.2 As a result of the above, some minor consequential changes are required to the Order. These changes are needed to ensure that the appropriate and agreed kittiwake

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compensation measures are reflected in the Order, in order that construction and implementation of the Order is in accordance with its conditions.

2.3 The changes that will comprise the non-material change application are as follows:

Delete the existing paragraph 3(c) of Part 1 of Schedule 14 of the Order and insert the following new text as a new paragraph 3(c):

“an implementation timetable for delivery of four artificial nest structures that ensures all necessary compensation measures are in place to allow three full kittiwake breeding seasons in respect of two artificial nest structures prior to the operation of any turbine forming part of the authorised development, and to allow two full kittiwake breeding seasons for the other two artificial nest structures prior to the operation of any turbine forming part of the authorised development, with the KIMP to specify whether the three or two breeding seasons applies to each artificial nest structure.”

Delete the existing paragraph 4 of Part 1 of Schedule 14 of the Order and insert the following new text as a new paragraph 4:

“The undertaker must implement the measures as set out in the KIMP approved by the Secretary of State and no operation of any turbine forming part of the authorised development may be commenced until three full breeding seasons have elapsed from the implementation of two of the artificial nest structures and two full breeding seasons have elapsed from the implementation of two of the artificial nest structures, as set out in the KIMP. For the purposes of this paragraph each breeding season is assumed to have commenced on 1 March in each year and ended on 30 September.”

3. **CONSULTATION AND SUBMISSION OF THE NON-MATERIAL CHANGE APPLICATION**

3.1 Applications for non-material changes to development consent orders are governed by the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (**‘the Regulations’**). Under regulation 7(3), the applicant can seek written consent to reduce the number of parties that need to be consulted on a non-material change application.

3.2 We consider that, taking a proportionate approach, only the MMO, NE, the RSPB, The Crown Estate and the Joint Nature Conservation Committee (**“JNCC”**) (the **“Consultees”**) should be consulted on this application, because these Consultees have played an active role in developing the ANS including their location, design, monitoring and adaptive management. The MMO, NE and the RSPB are active members of the OOEG, which was set up pursuant to paragraph 2 Part 1 of Schedule 14 of the Order. They also responded to the original consultation on 2nd November 2020 relating to the proposed Kittiwake Compensation Plan. In addition, Orsted has been in regular discussions with The Crown Estate, who have played an active role both from a strategic and project specific perspective in the site selection and have been kept informed of Orsted’s approach to the implementation of compensation. Orsted has also been granted the necessary seabed rights by The Crown Estate for two of the proposed sites for the ANS, which will be further detailed in the supporting documentation to this application. The JNCC are the authority for offshore nature conservation, working closely with Natural England. Orsted has already liaised with the OOEG and as noted above no objections have been raised to the proposed non-material change with its members.

3.3 We would be grateful for the Department’s view on whether this approach to consultation is acceptable. Orsted intends to submit the non-material change application to the Order shortly.

3.4 If you would like to discuss this letter, please contact Amy Stirling or Alex Tresadern at [REDACTED]@pinsentmasons.com or [REDACTED]@pinsentmasons.com respectively.

Yours sincerely

Pinsent Masons LLP
(This letter has been sent electronically and so is unsigned)