

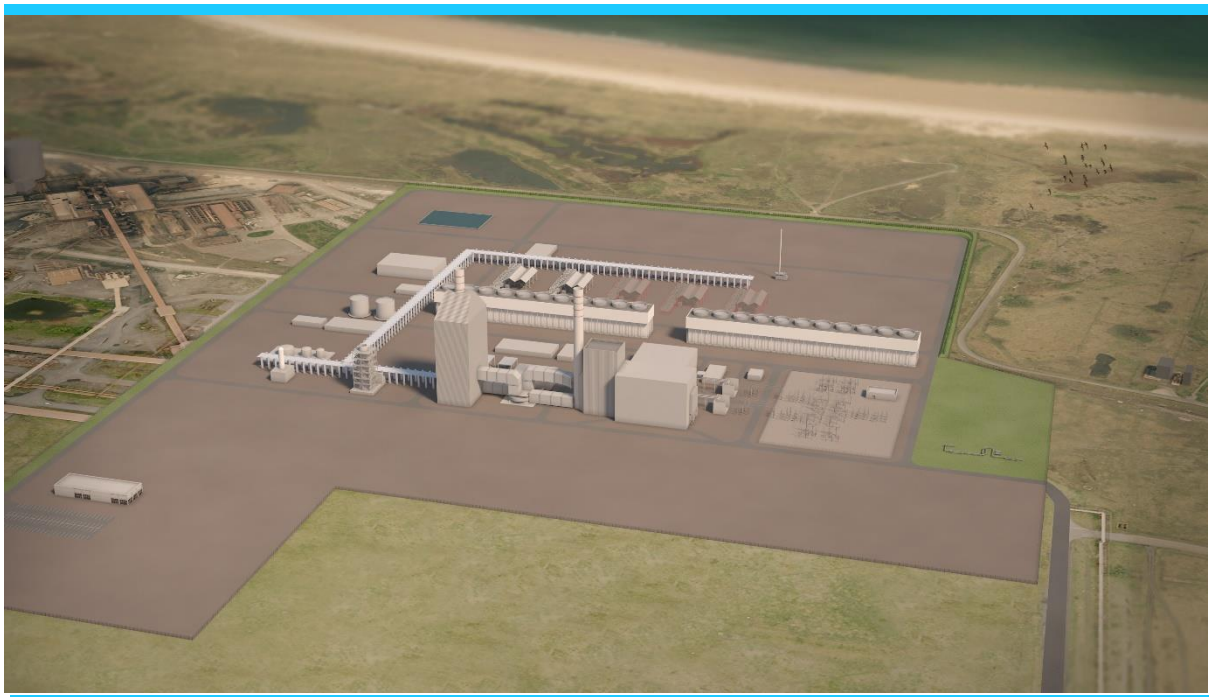
Net Zero Teesside Project

Planning Inspectorate Reference: EN010103

Land at and in the vicinity of the former Redcar Steel Works site, Redcar and in Stockton-on-Tees, Teesside

The Net Zero Teesside Order

Document Reference: 8.34 – Position Statement with Orsted Hornsea Project Four Limited



Applicants: Net Zero Teesside Power Limited (NZN Power Ltd) & Net Zero North Sea Storage Limited (NZNS Storage Ltd)

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1.0 POSITION STATEMENT BETWEEN THE APPLICANTS AND ORSTED HORNSEA PROJECT FOUR LIMITED

- 1.1.1 At Issue Specific Hearing 3 (ISH3), the Applicants and Orsted Hornsea Project Four Limited ("Orsted") made a number of submissions regarding the proposed inclusion of Article 49 ("Disapplication of Interface Agreement") (Agenda item 3) and the need for protective provisions in relation to Hornsea Project Four (Agenda item 6) in the draft DCO.
- 1.1.2 Whilst it is clear that both parties have divergent views on much of the substance of these matters, the parties have prepared this position statement to address two narrow points to assist with the ExA's understanding of the issues and inform the subsequent approach in this Examination (the "Position Statement").
- 1.1.3 The Applicants and Orsted are happy to provide such further clarification as the ExA may require in the second round of written questions.

2.0 ARTICLE 49 – DISAPPLICATION OF THE INTERFACE AGREEMENT

2.1.1 The Applicants and Orsted made extensive submissions in ISH3 regarding their competing views on the justification for the inclusion of Article 49 in the draft DCO. These are not repeated in this Position Statement to avoid duplication, and to seek to identify areas of common ground.

The Applicants' position

2.1.2 The Applicants consider that in circumstances where the Secretary of State concludes that it is appropriate to include in the Hornsea Project Four DCO a provision dealing with the Interface Agreement, an equivalent provision should also feature in the NZT DCO. The main purpose for reproducing the provision in the NZT DCO is to cater for circumstances in which the Secretary of State finds it appropriate to include a provision dealing with the Interface Agreement in the Hornsea Project Four DCO but nonetheless refuses that application for other reasons or the Hornsea Project Four DCO is granted subject to such provision but not implemented.

2.1.3 The Applicants accept that in the counterfactual scenario where the SoS does not consider it appropriate to include a provision in the Hornsea Project Four DCO dealing with the Interface Agreement, it would not be appropriate to include the equivalent provision in the NZT DCO.

2.1.4 The Applicants have proposed revised wording for Article 49 at Deadline 5, albeit the exact form of drafting of such provision will remain at the SoS' discretion. It is the Applicants' position that where a provision dealing with the Interface Agreement is included in the Hornsea Project Four DCO, it is entirely appropriate to replicate equivalent provisions in the NZT DCO.

Orsted's position

2.1.5 Orsted considers that the need for and appropriateness of a provision in the NZT DCO which interferes with the Interface Agreement should be fully examined in the NZT examination and considered by the Secretary of State in the context of the facts and circumstances at the time of the NZT DCO decision. Orsted considers that it would be wrong to blindly import a provision from the Hornsea Project Four DCO decision without a thorough consideration of the applicability of the reasoning for that decision to the NZT DCO decision. Looking at one possible scenario (purely as an example), where the Secretary of State refuses the Hornsea Project Four DCO but notes that, had he approved the DCO powers as sought he would have been minded to impose a provision dealing with the Interface Agreement, it does not necessarily follow that the Secretary of State would consider it appropriate to interfere with the Interface Agreement as he has not, in fact, granted the wider DCO powers.

2.1.6 The Secretary of State should be determining in the context of the NZT DCO application whether it is appropriate to include any article which seeks to interfere with the Interface Agreement at the instance of the Applicants of the NZT DCO, taking into account all relevant matters and evidence led as part of the NZT DCO examination and weighing the issue in the overall balance.

- 2.1.7 Orsted maintains its objections to the principle of interference with the Interface Agreement under the NZT DCO. This includes its submissions that to lawfully disapply the Interface Agreement (or any part thereof) the Applicant would need to obtain the consent of The Crown Estate. It also includes its objection to the introduction of such a provision part way through the NZT DCO examination, which Orsted considers to be a material change to the NZT DCO which has material and adverse impacts on Orsted's rights and interests, and should not be permitted.
- 2.1.8 Orsted has not had the opportunity to consider the re-drafting of Article 49 to be put forward by the Applicant and reserves its final position on this matter until it has reviewed the same.

3.0 PROTECTIVE PROVISIONS FOR HORNSEA PROJECT FOUR

3.1.1 The Applicants and Orsted made submissions at ISH3 in respect of the need (or otherwise) for protective provisions to be included in the NZT DCO for the benefit of Hornsea Project Four. These again are not repeated below, which is instead limited to confirming the parties' positions in circumstances where the Hornsea Project Four DCO has been made with Orsted's preferred protective provisions included (i.e. in circumstances where bp's submissions have been rejected by the SoS). This is described in Orsted's Deadline 2 submissions as 'scenario 3' [REP2-089].

The Applicants' position

3.1.2 In these circumstances (where Orsted's submissions as to protective provisions on the Hornsea Project Four DCO have been accepted by the SoS), the Applicants have not identified any reason why Orsted would require additional provision in the NZT DCO to safeguard the delivery of Hornsea Project Four. The Applicants are not aware of any explanation having been advanced by Orsted as to the need for additional protective provisions in the NZT DCO in that scenario and would welcome clarification from Orsted as to what further protection is required and on what basis.

Orsted's position

3.1.3 Orsted considers protective provisions are required to be included within the NZT DCO for the benefit and protection of Hornsea Project Four and, in particular, to ensure appropriate controls on the carbon storage activities within the overlap zone.

3.1.4 The protective provisions proposed by Orsted for inclusion in the Hornsea Project Four DCO are for the benefit and protection of the carbon storage licensee of the UK Carbon Dioxide Appraisal and Storage Licence CS001, as operator of the Endurance Store being proposed by the Northern Endurance Partnership. Subject to limited exceptions, the Orsted protective provisions prevent development in the overlap zone (as defined therein) until a coexistence and proximity agreement has been entered into with the carbon storage licensee, or it has been agreed or determined that no such agreement is required. These provisions oblige Orsted to engage with the carbon storage licensee prior to undertaking works in the overlap zone.

3.1.5 It is appropriate that the NZT DCO should contain reciprocal protections for Hornsea Project Four which ensure that the carbon storage licensee is under a reciprocal obligation to engage with Orsted on this matter. Orsted are seeking a fair and pragmatic mechanism to ensure that the respective projects engage to explore the degree of co-existence that can be achieved (thereby realising the maximum benefits of the respective projects). To achieve that both sides should be obliged to "come to the table" and participate in these discussions in advance of finalising their respective plans. The protective provisions offered by Orsted in the Hornsea Project Four DCO, together with the protective provisions sought by Orsted in the NZT DCO provide the required reciprocal obligation to engage.

3.1.6 Given the clear link between the NZT development and the offshore elements of the project, it is essential to include protective provision in the NZT DCO which require the Applicant to refrain from undertaking its development until such time as it is

known that the project as a whole can come forward in an acceptable way. The DCO process offers the best opportunity to fully consider the relevant issues and to apply appropriate mitigations and protections. There is no transparency in the storage permit process and whilst there may be the opportunity for limited consultation under the related EIA process, there is no opportunity to discuss issues and propose protections with the advisors to the decision maker.

- 3.1.7 Orsted has submitted a draft set of protective provisions for inclusion in the NZT DCO (REP2-089 Appendix 1) setting out the protection required.