

Secretary of State for Energy Security and Net Zero
1 Victoria Street
London
SW1H 0ET

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Your Ref: 205906
Our Ref: GOREH\073687-010128
Direct: 441618318087
Email: hayleygore@eversheds-sutherland.com

By Post and email

To whom it may concern

**THE ORSTED HORNSEA PROJECT THREE (UK) LIMITED (FERRY ROAD, HARTLEPOOL)
COMPULSORY PURCHASE ORDER 2023
OUR CLIENT: PD TEESPORT LIMITED
OBJECTION TO THE CONFIRMATION OF THE COMPULSORY PURCHASE ORDER**

- 1.1 We are instructed by PD Teesport Limited ("PDT") in relation to the Orsted Hornsea Project Three (UK) Limited (Ferry Road, Hartlepool) Compulsory Purchase Order 2023 ("the CPO") made by Orsted Hornsea Project Three (UK) Limited ("Orsted") and submitted to the Secretary of State for Energy Security and Net Zero for confirmation.
- 1.2 PDT is the statutory harbour authority for Teesport (the "Port") under the Teesport Acts and Orders 1966 to 2008, the local legislation relating to the Port. Under section 12 of the Tees and Hartlepool Port Authority Act 1966 it is PDT's duty "*to take such steps from time to time as they may consider necessary for the conservancy, maintenance and improvement of the harbour and the facilities afforded therein*". Powers and duties relating to the Port are conferred and imposed on them under the Teesport Acts and Orders 1966 to 2008 and under public general legislation. PDT is therefore responsible for safe use and maintenance of the river and wholly committed to ensuring that the river plays its full part in supporting the future growth of our region and the UK as a whole.
- 1.3 PDT's status as a harbour authority means that it is a Statutory Undertaker for the purposes of sections 16 and 17 of the Acquisition of Land Act 1981 ("ALA 1981").
- 1.4 PD Teesport is a key piece of national infrastructure and one of the largest private employers in the Tees Valley. It plays a critical role facilitating the nation's trade. Its main operation at Teesport is the fifth largest port in the UK and only major port in England to handle more exports than imports. It supports 22,000 jobs and contributes £1.4 billion to the UK economy each year.

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- 1.5 Handling 29 million tonnes per year, the Port supports the movement of international imports and exports throughout the North of the UK; affirming its position as a key driver in the nation's supply chain operations.
- 1.6 With circa 26 vessel calls a week (excluding bulks calls), Teesport is the UK's northern gateway for global shippers; serving worldwide markets including Scandinavia, the Baltics, the Netherlands, Russia, Belgium, France and Poland. Frequent, direct connections are complemented by monthly arrivals from Japan, expanding Teesport's reach beyond the major hub ports of Europe and providing shippers with maximum choice.
- 1.7 The land and business assets of PDT are a major economic driver for the North East of England, including being part of the region's energy hub, bringing together a business cluster that unlocks powerful collaborative potential between energy providers, world-class manufacturers and industry-leading suppliers.
- 1.8 With a proven reputation of delivering new, private investment, PDT has attracted over £1 billion's worth of projects to Teesside in the last decade as part of an ambitious vision to make the River Tees the UK's most successful port region by 2050.
- 1.9 Orsted is seeking compulsory powers for the acquisition of new rights over land owned by PDT. The land over which the new rights are proposed to be acquired by Orsted pursuant to the CPO are entirely within PDT's operational land and the use of those rights by Orsted could potentially adversely affect PDT's harbour undertaking and other harbour users.
- 1.10 Teesport operates in such a way that it requires the ability to close off access to the private access routes within the site, and the rights proposed to be acquired would restrict PDT's ability to do so at short notice and without providing alternative access routes. It is imperative to the operation of PDT's statutory undertaking to ensure that the construction and operation of the proposed works do not adversely affect its harbour undertaking or other harbour users.
- 1.11 PDT has sought to liaise with Orsted to clarify the position and explain the serious detriment which would be caused by the acquisition and use of the proposed new rights. However, Orsted has in its negotiations with PDT treated the issue as a matter which can be resolved by agreeing suitable compensation. This is not PDT's priority; it is the short and long terms impacts on the operation of the harbour undertaking which are of grave concern to PDT. While PDT does not contend that Orsted has failed to negotiate the acquisition of the rights by private agreement, PDT considers that it would not be able to agree to such an acquisition as it has a duty to ensure that the

use of the operational land comprising its statutory undertaking avoids interruption to other critical infrastructure in the area and causes minimal disturbance to local businesses.

- 1.12 For the reasons set out herein it is PDT's position that the proposed new rights cannot be acquired or used without causing serious detriment to its undertaking which would ultimately result in significant limitations on the operation of said undertaking and a consequential detrimental impact on the local economy and neighbouring businesses.

2. **UNACCEPTABLE IMPACTS ON PDT'S STATUTORY UNDERTAKING**

- 2.1 The impact of the acquisition and use of the proposed new rights over PDT's land will be significant and seriously detrimental to the operation of the harbour undertaking. PDT would be limited in its ability to fully secure its operational land at will, and any diversion of the acquired rights would be subject to requirements for consultation, obtaining planning permission, and a lengthy (6 month) notice period. The safe and efficient operation of the harbour requires PDT to be able to secure its site at short notice and to utilise the operational land howsoever may be required at any given time.
- 2.2 The introduction of restrictions on the way in which PDT may use and secure its land poses a real risk of contravening safety requirements and legal obligations PDT which PDT owes to His Majesty's Customs and Revenue (HMRC). The Port cannot permit unrestricted access through a high security, International Ship & Port Security (ISPS) controlled area, which is also covered by a Customs Wharf approval in relation to imports and exports through the Port, including high security and potentially high value HMRC bonded warehousing within the Port.
- 2.3 In addition, the potential for terrorism at key national infrastructure locations also places an additional burden on port operators to ensure that access and egress is suitably controlled. PDT employs security, CCTV and its own Harbour Police force to ensure adequate controls are in place to ensure the prevention of risks to national security.
- 2.4 The whole premise of a port estate, as key UK infrastructure, is that it is effectively treated as though it is outside of the domestic UK market, with the main security gatehouse providing strict controls on cargo and people entering and leaving the Port estate. That gatehouse, for departures from the Port, is the effective point of entry into the UK from a Customs perspective. It is incompatible with the aforementioned security requirements for a private entity to acquire unrestricted access through a high security and high potential consequence piece of national infrastructure. Equally, it is also not appropriate for such access rights to cross or transit any part of the ISPS

secure port boundary or through a Customs-controlled wharf, including approved bonded areas within the Port.

- 2.5 Finally, it must be noted that the harbour area is particularly complicated from a land interest perspective with a vast number of businesses relying upon PDT's activities, historic rights and infrastructure. PDT must seek to protect these broader interests in the continuing operations of the Port. Such complexities are managed by PDT on a day to day basis, with the benefit of its vast experience and knowledge of the area, the businesses which it hosts and their interrelationships. For this reason, PDT considers that exercise of the proposed rights would have a significant detrimental impact both on PDT's statutory undertaking and the businesses which rely upon it.
- 2.6 For these reasons, PDT strongly considers that it would not be in the public interest to confirm the CPO and, further, that it would indeed be detrimental to the local and wider public interest to do so.
- 2.7 PDT reserves the right to provide additional evidence in relation to the impacts on its statutory undertaking in due course.

3. **FAILURE TO UTILISE THE MOST APPROPRIATE POWER**

- 3.1 Orsted has already obtained development consent and compulsory acquisition powers under the Hornsea Three Offshore Wind Farm Order 2020 (as amended and corrected by subsequent orders) ("Hornsea 3 DCO"). Those powers relate to the wider scheme which has given rise to the need for the ANS Works. Orsted has opportunistically acquired the Site for the ANS Works, without the benefit of access rights over PDT's land, and rather than seeking to further modify the Hornsea 3 DCO to enable those rights to be acquired under the compulsory purchase powers contained therein, Orsted is instead seeking to acquire the proposed new rights using powers under the Electricity Act 1989.
- 3.2 Pursuant to paragraph 11 of Department for Levelling Up, Housing & Communities Guidance on Compulsory Purchase and the Crichel Down Rules (July 2019), it is incumbent upon an acquiring authority to use the most specific power of acquisition available to it and not use a general power when a specific power is available. It is contended that seeking a modification to the Hornsea 3 DCO to extend the compulsory acquisition powers contained therein, is the appropriate course of action as opposed to seeking the confirmation of the CPO to utilise general powers of acquisition under the Electricity Act 1989.
- 3.3 Further, by limiting the scheme to which the CPO relates to the acquisition of access rights to the Site for the ANS Works, Orsted has sought entirely inappropriately to

circumvent the consideration of the wider scheme and the ANS Works on PDT's statutory undertaking as part of the process of the confirmation of the CPO.

- 3.4 Notwithstanding PDT's position that the acquisition of the proposed new rights should not be authorised, it is contended that such rights should be sought under the same development consent regime to which the rest of the scheme has been subjected so that the impacts can be considered holistically. Seeking these compulsory acquisition powers under the Electricity Act 1989 is inappropriate and in direct contravention of the relevant Government guidance.

4. **FAILURE TO CONSIDER ALTERNATIVES**

- 4.1 It is not clear from the Statement of Reasons prepared by Orsted in support of the CPO that alternatives for the ANS Works have been fully considered. By using powers in the ALA 1981 and the Electricity Act 1989, Orsted appears to be seeking to circumvent the requirement to consider alternatives locations for the ANS Works by acquiring the land for those works separately to the access rights being acquired pursuant to the CPO. While PDT reserves its position as to whether there are alternatives which could be acquired to access the Site, in limiting the purpose of the acquisition to access rights, Orsted has artificially restricted PDT's ability to opine upon the impact of the ANS Works on its undertaking as part of the undertaking. For the avoidance of doubt, PDT has grave concerns that the introduction of nesting structures for Kittiwakes (and which will inevitably be utilised by other avian species) will also have a detrimental impact on the harbour undertaking. The land within PDT's ownership is used for the storage of goods which will be impacted upon by increased levels of waste created by what is proposed and likely to be a significantly increased nesting bird population in the vicinity of the harbour. PDT reserves the right to provide additional evidence in relation to this impact in due course.

5. **FURTHER CONCERNS**

- 5.1 It should also be noted that prior to acquiring the Site, Orsted was informed that no access rights to the Site were in place. Orsted acquired the Site regardless and thereafter unsuccessfully sought to claim access rights by prescription. PDT believes that Orsted is now seeking to obtain statutory acquisition powers to make good on a bad deal in respect of the purchase of the Site rather than pursuing these powers on the basis that there a compelling case in the public interest to do so.
- 5.2 PDT also notes that the Local Planning Committee rejected Orsted's application for planning permission for the ANS Works. While it is acknowledged that Orsted has now obtained permission pursuant to an appeal, it should be noted that there is a clear lack of local support for the ANS Works in their proposed location.

6. **OBJECTION**

6.1 For these reasons, PDT must **OBJECT** to the confirmation of the CPO. PDT is also of the view that it has not been demonstrated that the proposed compulsory acquisition by Orsted can be undertaken without serious detriment to PDT's undertaking (as required by section 16(2) of ALA 1981) and should not therefore not be confirmed by the Secretary of State in its current form.

6.2 PDT reserves the right to add to and expand upon these grounds of objection in due course.

Yours faithfully

Eversheds Sutherland (International) LLP

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