



SHEPHERD+ WEDDERBURN

RESPONSES TO DEADLINE 2 SUBMISSIONS ON BEHALF OF

(1) BARROW OFFSHORE WIND LIMITED (REF: 20049974) (2) BURBO EXTENSION LTD (REF: 20049975) (3) WALNEY EXTENSION LIMITED (REF: 20049977) (4) MORECAMBE WIND LIMITED (REF: 20049973) (5) WALNEY (UK) OFFSHORE WINDFARMS LIMITED (REF: 20049978) (6) ØRSTED BURBO (UK) LIMITED (REF: 20049976) (THE "ØRSTED IPs")

IN CONNECTION WITH THE Application by Morecambe Offshore Wind Limited for an Order Granting Development Consent for the Morecambe Offshore Wind Farm

## 1. Introduction

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- 1.1 This submission is provided in accordance with Deadline 3 of the examination timetable for the application by Morecambe Offshore Windfarm Limited (the “**Applicant**”) for an Order under the Planning Act 2008 (the “**Act**”) granting Development Consent for the Morecambe Offshore Windfarm Generation Assets (the “**Project**”).
- 1.2 We represent six owners of operational offshore windfarms in the East Irish Sea (as set out relevant representations RR-008, RR-014, RR-056, RR-088, RR-089, RR-093), who we refer to together as the “**Ørsted IPs**” for the purposes of this submission.
- 1.3 This document contains the Ørsted IPs’ responses the Applicant’s comments on their written representations [REP2-027].

## 2. Wake effects

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- 2.1 The Ørsted IPs have set out their position in respect of the requirement for the wake effects of the Project to be assessed and addressed fulsomely in a number of submissions [REP1-103], [REP2-040], [REP2-041]. However, the Ørsted IPs wish to respond to a number of comments made by the Applicant regarding wake effects in [REP2-027].
- 2.2 The Ørsted IPs note that the wake assessment report carried out by independent consultants Wood Thilsted, and submitted at deadline 2 [REP2-041] (“**Wake Report**”), has been updated to reflect feedback received in the examination for the Morgan Offshore Windfarm (regarding the use of the PEIR boundary for that project). An updated version of the Wake Report is submitted alongside this submission. It is noted that there are no changes to the estimated effects of the Project as a result of the updates, although there are minor changes in the predicted cumulative effects.

### Definition of ‘close’

- 2.3 The Ørsted IPs have set out their view that what should be considered “close to” for the purposes of paragraph 2.8.197 of the NPS-EN3 that must be determined in its context, by reference to the likelihood of potential effects in [REP1-103].
- 2.4 The Applicant has responded that the Ordinary dictionary definition of close should be used, being “*Very near in position: in or nearly in contact: narrowly escaped. Very near in position, relation, or connection: in or into immediate proximity or intimacy.*”
- 2.5 The Ørsted IPs do not consider this definition resolves any ambiguity in the interpretation of ‘close’. What constitutes “*very near in position*” also requires a judgment to be made, in the context of the assets at play.
- 2.6 An important principle of legal interpretation is that where the meaning of a word is not defined, the meaning should be established in light of the purpose of the provision.
- 2.7 The purpose of paragraph 2.8.197 of the NPS-EN3 is to provide an understanding of the effects of a development on existing sea users, in order to allow the Secretary of State to undertake decision making in accordance with paragraphs 2.8.341-2.8.348 (which includes satisfaction that site selection and site design has been made with a view to avoiding or minimising disruption or economic loss to other offshore industries). We consider the purpose of these policies is to ensure that new development understands and minimises adverse impacts on existing infrastructure, to ensure successful coexistence.
- 2.8 Therefore, if a development has the potential to result in a material impact on existing infrastructure, it should be considered ‘close’ to that infrastructure for the purposes of the NPS-EN3.
- 2.9 The Applicant goes on to state that its position is supported by the Frazer-Nash report [REP1-089], which considers wake effects of windfarms and makes findings regarding the impacts of wakes at certain distances. These findings include (as relied on by the Applicant) that “*For separations much larger than 20 km, farm -to -farm wake losses will become vanishingly small.*”

- 2.10 The Applicant, therefore, relies on a report relating to the degree of wake impacts experienced at different distances to support its interpretation of the term ‘close’. This would suggest that the Applicant also considers level of effect is relevant to this exercise.
- 2.11 The Applicant has taken an unduly narrow interpretation of the NPS-EN3 in respect of effects on sea-users, which the Ørsted IPs consider undermines the intent of the policy document.
- 2.12 The Ørsted IPs consider recent statements by the UK Government on the issue of wake effects supports their interpretation of the NPS-EN3 – one which requires wake effects to be evaluated and addressed.
- 2.13 In the Clean Power 2030 Action Plan, the UK Government identified that wake effects between developments present a risk to offshore wind development. In particular, that document recognises that new projects with larger and/or a greater number of turbines have “*an even greater propensity*” to cause wake effects on existing downstream operational projects. The document goes on to describe the Awel y Mor decision as setting a “*precedent*” through the imposition of a wake loss condition (where historically the issue had been dealt with privately).<sup>1</sup>
- 2.14 The Government is now working to bring together industry experts to work on this issue, in particular in relation to mitigation. In light of these statements, there can be no doubt that the Government’s position is that wake effects from new developments can result in material adverse effects and that there is a need for these effects to be addressed. This does not support the Applicant’s position that a wake assessment is out with the requirements of the NPS-EN3 or that the examining authority and secretary of state should not be considering this issue. The Applicant’s refusal to engage meaningfully on the issue is not helpful to decision makers.

#### Relevance of the TCE leasing process

- 2.15 In response to the Applicant’s discussion regarding compliance with the Crown Estate’s (“**TCE**”) separation distances in the leasing process, the Ørsted IPs’ reiterate that compliance with such boundaries does not obviate the need to assess and address a proposed developments’ effects in the consenting process. There is no evidence to suggest that TCE intended for leasing separation distances to be relied upon for this purpose, as outlined in the Ørsted IPs’ deadline 2 submission [REP2-040].

#### Future viability

- 2.16 The Applicant has stated that the Orsted IPs’ view that the Project could impact long-term decision making regarding their developments is “*supposition*”.
- 2.17 The Orsted IPs’ position is based on evidence and industry experience. To explain further, the Ørsted IPs consider (based on modelling undertaken by Wood Thilsted and other evidence regarding the potential for wake loss between windfarms at the distances at play) that the Project individually and cumulatively with other proposed developments, is likely to have a material impact on decisions regarding lifetime extensions of their developments.
- 2.18 Extending the lifetime of the Orsted IPs’ existing projects would benefit the UK grid by providing additional green electricity in a sustainable manner. However, decisions regarding lifetime extensions will hinge on the financial viability of the projects beyond their expected earliest decommissioning date (we note a number of the projects do not require additional consents to continue operating). A material increase of wake impact as a result of the Project could be sufficient to make operations uneconomic.
- 2.19 The UK Government has indicated its strong support for maximising the lifetime of existing assets in its Clean Power 2030 Action Plan. In that document, it is recognised that early retirement of existing assets presents a risk to the achievement of Clean Power 2030 targets and Carbon Budget 6. It is also noted that wider measures are being implemented to support the repowering and life extension of renewable assets.<sup>2</sup> In particular, in relation to offshore wind, the Government is implementing measures that will support the repowering and life extension of renewable assets, including through Ofgem’s work on Offshore Transmission Owner asset life extensions.<sup>3</sup>

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<sup>1</sup> Page 84 of the Clean Power 2030 Action Plan (published 13 December 2024).

<sup>2</sup> Page 79 of the Clean Power 2030 Action Plan (published 13 December 2024).

<sup>3</sup> Ibid.

- 2.20 This builds upon work being undertaken by TCE in relation to lifetime extensions. As part of their 2023 annual report,<sup>4</sup> The Crown Estate published a study of the benefits of life extension along with a comparative analysis of different offshore wind project types. They summarise their finding as follows: *“while new developments contribute highly to security of affordable energy, a life extended project scores much higher in terms of the efficiency of materials and space, and minimising environmental impact”*.

#### North West Marine Plan

- 2.21 The Ørsted IPs agree the policies of the North West Marine Plan highlighted by the Applicant apply to the Project.
- 2.22 The Ørsted IPs consider these policies support their argument that the wake effects of the Project should be assessed and mitigated in order to achieve coexistence.
- 2.23 Policy NW-CO-1 of the North West Marine Plan provides that proposals which *“incorporate opportunities for co-existence and cooperation with existing activities will be supported.”* Proposals that may have significant adverse impacts on existing activities must demonstrate that they will avoid, minimise and mitigate such adverse effects on an existing activity so they are no longer significant.
- 2.24 The Applicant is unable to demonstrate that this policy has been complied with, given its refusal to assess and mitigate wake effects and its reluctance to engage with the Ørsted IPs. The Applicant has noted that it did not identify any significant adverse effects to the Ørsted IPs during its EIA assessment and therefore considers it has complied with the policy. The Ørsted IPs consider this finding is not relevant as the Applicant has refused to assess wake effects of the Project. The Ørsted IPs have provided evidence demonstrating a significant adverse effect to their assets arising from the Project and therefore the Applicant must take steps to mitigate the effect in order to provide for coexistence, as required by the Marine Plan.

#### Modelling limitations

- 2.25 The Applicant has argued that any wake assessment of the Project would be limited by factors such as operating parameters/final array of turbines, lack of agreed modelling software/standard guidance and the fact that the Applicant does not have access to the Ørsted IPs' operating performance.
- 2.26 In response, the Ørsted IPs note that industry specialists routinely undertake wake assessments. The Wake Report submitted by the Ørsted IPs has submitted is one such assessment. While certain assumptions must be made in carrying out wake assessments, these can be made on an educated basis to provide a range of robust likely outcomes.
- 2.27 The model used for the Wake Report (Wind Farmer) was developed to enable more consistent application of AEP methodologies and technical components that can otherwise influence wake analysis outcomes. These tools are as close to an industry standard as is available. Wind Farmer has been validated on hundreds of wind farm projects.
- 2.28 The Ørsted IPs note that many of the inputs required for wake assessments (and which have been used in the Wake Report) are publicly available. While power curves of turbine manufacturers are confidential, these could be shared confidentially with consultants through an NDA. This is normal industry practice.
- 2.29 The Ørsted IPs consider the Wake Report is a reliable and robust assessment of the likely effects of the Project and reiterate that such assessments are routinely carried out and relied upon by wind farm developers.

### **3. Environmental assessment**

- 3.1 In response to the Applicant's comments at WR-112-08, regarding the operational lifetime of the Barrow Offshore Wind Farm, the Ørsted IPs refer to their response to the examining authority's first set of written questions (question 1GEN1).

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<sup>4</sup> Page 24 of the “UK Offshore Wind Report 2023” by the Crown Estate”.

- 3.2 Appendix 1 to that response provides evidence that this asset can continue to operate beyond 2030 without requiring further consent. Therefore, the Ørsted IPs request the Applicant updates their cumulative environmental assessments going forward to include Barrow Offshore Wind Farm, noting Mona Offshore Wind Project have updated their relevant assessments taking into account our request for Barrow Offshore Wind to be included.
- 3.3 While the 'Update on Without Prejudice Compensation Measures [REP1-093]' document does state that the Applicant is developing potential compensation options for red-throated diver should these be required, no potential measures have been presented yet.
- 3.4 There is still uncertainty regarding compensatory measures for red throated divers and therefore the Ørsted IPs request for 'a proper understanding of the potential compensatory measures' which remain unaddressed.

#### **4. Shipping and Navigation**

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- 4.1 The Ørsted IPs acknowledge that the Applicant has stated in WR-112-13 that in-isolation "...collision likelihood for WoDS OWF is greatest on the southern structures, but these likelihoods remain very similar to the base case scenario...". However, the Ørsted IPs retain concerns about the cumulative impacts of Morecambe Offshore Windfarm Generation Assets, especially in light of offshore wind receptors not being adequately addressed direct impacts to existing offshore wind assets within Volume 5 – Chapter 15 Shipping and Navigation (APP-051) or Chapter 17 - Infrastructure and Other Users (APP-054).
- 4.2 The Ørsted IPs are therefore not satisfied that the commitment to engage with "existing sea users" or through the Marine Navigation Engagement Forum (MNEF) provides sufficient certainty that they will be engaged with pre-approval of the Vessel Traffic Management Plan ("VTMP"). Provisions regarding the MNEF currently in the outline VTMP are relatively high-level and do not detail in sufficiently clear or specific terms how the MNEF will be engaged with in respect of the VTMP, nor the Marine Pollution Contingency Plan ("MPCP") or Emergency Response Co-operation Plan ("ERCoP").
- 4.3 Therefore, the Ørsted IPs seek a formal commitment to ensuring they have the opportunity to review the VTMP pre-submission to the Marine Management Organisation pre-construction in the interests of navigational safety within the vicinity of the Ørsted IPs assets, as a named consultee in the VTMP.

**Shepherd & Wedderburn LLP**

**22.01.2025**