

**PLANNING ACT 2008**

**The Morecambe Offshore Windfarm Generation Assets Development Consent Order  
Application**

---

**Deadline 4 submission by Spirit Energy Production UK Limited**

**Written Summary of Oral Case and Post-Hearing Submissions: ISH3 and ISH4**

---

**EN010121**  
**Unique Reference: 20049981**

<b>Date</b>	18 February 2025
-------------	------------------

## 1. **Introduction**

- 1.1 'Spirit Energy' is the trading name used by Spirit Energy Limited and its subsidiaries, including Spirit Energy Production UK Limited, a group which collectively conducts European oil and gas operations.
- 1.2 Eversheds Sutherland (International) Limited are instructed by Spirit Energy (**Spirit**) in relation to the proposed development consent order application (the **Application**) made by Morecambe Offshore Windfarm Ltd (the **Applicant**) for the proposed Morecambe Offshore Windfarm Generation Assets (the **Project** or **Proposed Development**).
- 1.3 This submission contains Spirit's written summary of its oral submissions, and post-hearing submissions, in relation to:
  - 1.3.1 Issue Specific Hearing 3 (Other Sea Users and Aviation) (**ISH3**);
  - 1.3.2 Issue Specific Hearing 4 (Draft Development Consent Order) (**ISH4**).

## 2. **Written summary of ISH3 submissions**

### **Item 1: Introductions**

- 2.1 Introductions to Spirit representatives: Mr James Gibson (Eversheds Sutherland, Partner) Mr Peter Hepburn (Spirit Energy, Asset Director for the Morecambe Hub) Mr Denis Ustich (Spirit Energy, Head of Logistics Operations) Mr Nigel Blackstock (AviateQ International, Managing Director) Mr Jonathan Clarke (Spirit Energy, Senior Portfolio Analyst).
- 2.2 Spirit's participation was in relation to Agenda item 3 (shipping and navigation) and Agenda item 6 (other offshore infrastructure and marine operations).

### **Item 3: Shipping and Navigation**

- 2.3 Spirit confirmed that it was reviewing the updated radar early warning system (**REWS**) report from the Applicant submitted at Deadline 3 [REP3-034] and would respond with its comments at Deadline 4 on 18<sup>th</sup> February 2025. **Post-Hearing Submission:** *Spirit has responded with its comments on the updated REWS report at Part 8 of its Response to the Applicant's Deadline 3 submissions.*
- 2.4 Spirit confirmed that Automatic Identification System (**AIS**) was integrated within Spirit's REWS system. However, as described in Spirit's written submission, the system can be spoofed and switched off. It cannot be relied as an acceptable means of tracking shipping. **Post-Hearing Submission:** *the Examining Authority is directed to paragraphs 3.45 and 3.46 of Spirit's Written Representation dated 26 November 2024 [REP1-116] which explains why AIS is not a replacement for a radar system and that the UK Health and Safety Executive does not recognise AIS as a standalone system.*

### **Item 6: Aviation**

#### Current Guidance

- 2.5 Mr Blackstock on behalf of Spirit confirmed agreement with the Applicant's aviation consultant that, under current rules, the obstacle clearance distance was 500 feet when visual flying and 1 nautical mile when instrument flying.

#### CAA Rule Change and AltMoC

- 2.6 There was a discussion on the proposed rule change that would require VFR day only flying within 3nm of wind turbines, and which is currently being considered by the CAA. The Examining Authority (**ExA**) noted that the 3nm rule change was to be reflected in Acceptable Means of compliance (**AMC**) rather than regulations, and that a deviation from an AMC would require CAA approval for an Alternative Means of Compliance (**AltMoC**). Spirit were invited to respond to the ExA's question that, without any rule change, it would

be for promoters of offshore wind farms to demonstrate that access can be achieved and that this could be a negotiated position.

- 2.7 Mr Ustich on behalf of Spirit explained that this is the approach that the Applicant has outlined. However the appropriate distances are dependant on environmental conditions and that Spirit's assessment had demonstrated that the calculated 3nm limit was insufficient to safely take off and land from its installations.
- 2.8 Mr Andy Wales of the CAA was asked whether a CAA rule change would have retrospective effect. Mr Wales advised that this would depend on particular circumstances and the outcome of consultation, and that ultimately maintaining safety was its objective. Mr Gibson on behalf of Spirit stated that the change needed to be put in context of VFR day flying and did not change Spirit's unequivocal position that IFR was required and that this necessitated 3.76nm of unobstructed airspace.

***Post-Hearing Submission:***

*CAA Rule Change:*

- 2.9 *The CAA has confirmed at the hearing and in its response at Deadline 3 to the ExA's First Written Question 1CAR7 that it will introduce a change. It has indicated in its response that AMC and guidance material will be introduced in relation to flight safety around wind farms by the end of this year at the target date of November 2025. To this end, the CAA has been very clear that changes will be introduced.*
- 2.10 *The 3nm figure is drawn from the industry position given by helicopter operators in response to the CAA's request for comments on the appropriate buffer distance for night VFR operations. Spirit's helicopter operator, NHV, already applies this buffer.*
- 2.11 *It is self-evident that the industry working group has set a 3nm VFR day only protocol (and operators including NHV have adopted this in its operating manuals) that this is what is required to operate safely. It follows that a VFR day only restriction within a distance of less than 3nm is highly unlikely to be adopted by the CAA. Indeed Spirit's understanding of discussions through the working group was that the CAA had considered the 3nm to be the minimum separation distance.*
- 2.12 *If the rule change were to be adopted, there would be no means of complying with it if it is a regulatory change (an AltMoC can only be applied where a restriction is secured by AMC). There is nothing categorical from the CAA that confirms that a regulatory change will not be made (only that it is currently considering AMC and guidance at this stage).*
- 2.13 *It bears repeating: Spirit's position as set out herein and at the hearing relates only to VFR day flying and the possibility of a CAA rule change within 3nm. That has no bearing on Spirit's position, as has been expressed throughout the Examination, that it must be able to fly using instruments. To do that safely, Spirit requires 3.76nm of unobstructed airspace from its assets to be secured as mitigation in the DCO (whether there is a CAA rule change or not).*

*AltMoC:*

- 2.14 *The Applicant has assumed that Spirit can get an AltMoC to fly in VFR at night within 3nm and IMC with the IMC take-off corridor that it has proposed to the south west of CPC. There are major weaknesses with this assumption.*
- 2.15 *First, the CAA will only consider AltMoc if the restrictions are laid out in the AMC and guidance, and not in Regulations. Accordingly if Regulations stipulate VFR day only within 3nm, no AltMoC is even capable of being applied for. It is simply not an option to not to comply with the Regulations.*
- 2.16 *Second, if the 3nm VFR day only requirement is secured as AMC, then in order to have an approved AltMoC the aviation operator would have to demonstrate an equivalent safety standard to the AMC. It is almost impossible for there to be an equivalent safety standard*

*for performing night and IMC operations compared to the requirements for day and VMC operations. It is not clear at all why the Applicant or its aviation consultant consider that this can ever be demonstrated to be "as safe" as day time flying using visual flying rules.*

- 2.17 *Third, Spirit cannot base the future of its operations on an AltMoC dispensation which may not be granted and has not been granted before for any CAA regulations (apart from training requirements during COVID).*
- 2.18 *Fourth, the examples provided by the Applicant's aviation advisors including Beatrice operations with 2 x standalone WTGs have not been (as Anatec suggested) subject to CAA AltMoC dispensation. Rather all operational restrictions were covered within Aviation Operator Operations Manuals. There were no regulations requiring AltMoC when the operations at those facilities were conducted. Furthermore, the primary means of access to the Beatrice NUI platform was with Crew Transfer Vessels. Taken together those submissions by the Applicant's aviation consultant are deeply misleading.*

#### Safety Implications

- 2.19 A discussion followed on the safety implications of constraints on Spirit's helicopter flying operations.
- 2.20 Mr Hepburn on behalf of Spirit first explained the safety implications of increased flights. That this was the most hazardous aspect of the operations: every time personnel get on a helicopter, they are taking risks. So with more flights, there is a higher probability of something going wrong.
- 2.21 Mr Hepburn further explained that there is an impact on how Spirit are able to maintain its assets, particularly the normally unmanned installations (**NUIs**). Specifically that not being able to get there as often, and for as long, presents a safety issue. If Spirit cannot maintain those assets, they are effectively not in a safe state. Mr Hepburn explained that Spirit will never send individuals to an asset if it is not safe, and that it also has a legal duty to ensure that it maintain those assets in a safe state.
- 2.22 Finally, Mr Hepburn explained the evacuation risk. The fact is, evacuation is one point. But as a reasonably prudent operator, Spirit would not wait until the situation gets so critical that one must undertake an emergency evacuation. Mr Hepburn explained that Spirit would look to down-man the installation first, and that has been achieved across a number of assets in the North Sea, such as the Elgin Franklin previously in 2006.
- 2.23 The Applicant's safety consultant stated (whilst acknowledging that he has not considered Spirit's safety case) that a helicopter evacuation would be too slow given only a single helicopter would be available and shared with other operators, and that it would take 18 hours to 24 hours to evacuate the installation. The Applicant's safety consultant further stated that "a prudent operator would request SAR assistance".
- 2.24 Mr Hepburn explained that if Spirit have an emergency situation, crisis management would be invoked and Spirit can therefore authorise additional helicopters and would work with other operators to do that. It has been shown that using helicopters is the quickest and safest way to evacuate. Mr Hepburn explained that there would be three helicopters at Blackpool Airport that could be utilised (not one as assumed by the Applicant's consultant). Mr Hepburn stated that there is industry data about the difference between helicopter evacuation and lifeboat evacuation in terms of the level of risk presented to the individual.

#### ***Post-Hearing submission:***

- 2.25 *With respect to helicopter evacuation being "too slow": multiple means of evacuation can be deployed for a single event; Spirit are not solely reliant on its commercial helicopter service provider.*
- 2.26 *Every helicopter load during an emergency evacuation represents a group of people exposed to a lower risk than would otherwise be the case for evacuation by lifeboat. Spirit would pursue helicopter evacuation for as long as it remains a viable means of evacuation*

*from an unimpaired helideck. Noting also that evacuation can be performed to the nearby installation instead of directly to Blackpool to ensure the maximum number of people are evacuated from an unimpaired helideck, which significantly reduces the journey time.*

- 2.27 *With respect to using lifeboats for emergency evacuation, the means of evacuation have been selected in compliance with the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995 (**PFEER**) based on their contribution to reducing the risks to those who might have to use them to as low as reasonably practicable, and by giving preference to the normal means of getting people to and from the asset.*
- 2.28 *Helicopter is the lowest risk means of transport to personnel, and therefore the ALARP means of emergency transport. Lifeboats have been provided as an alternative means of evacuation only in case the circumstances of the emergency make helicopter evacuation impracticable. Every helicopter load during an emergency evacuation represents a group of people exposed to a lower risk than would otherwise be the case for evacuation by lifeboat.*
- 2.29 *Flight restrictions that have a significant impact on access to commercial helicopter evacuation services, increase reliance on alternative means of evacuation by lifeboat which significantly increases the fatality probability during an emergency evacuation; typical individual fatality probability:*
- 2.29.1 *helicopter transportation of the order 0.000003 (3 in 1 million) per flight*
- 2.29.2 *lifeboat evacuation estimated in the QRA 0.06 (6 in 100)*
- 2.29.3 *an industry review of real emergency evacuations by lifeboat found the average fatality rate to be much higher in real experience than the QRA estimate (0.13).*
- 2.30 *With respect to reliance on SAR: the closest SAR airport in the area is Caernarfon Airport and the second base is in Prestwick. Caernarfon is around 50nm away to the Morecambe Hub field so the response time with the 15min aircraft readiness will be at least an hour. There are 2 x S92 aircrafts in Caernarfon and 2 x AW189 aircrafts in Prestwick.*
- 2.31 *It is worth noting that MCA can deploy the aircraft from any other base depending on the number of emergencies in the area. In total, there are 22 x helicopters over 10 x locations in the UK.*
- 2.32 *Spirit strongly disagree with Spirit simply relying on SAR. Reliance on SAR for emergency medical evacuation could significantly delay urgent responses elsewhere and casualty access to medical treatment, creating an unnecessary risk to life beyond Spirit's concerns. Reliance on SAR for other emergency evacuation would actually increase reliance on higher risk lifeboat evacuation as the event escalates. SARs could not credibly be used at all for down-manning, but urgent evacuation may still be needed.*
- 2.33 *The Applicant's consultant (DNV) went on to specifically say that commercial air transport would be impeded by the nature of the event including smoke ingestion into engines and heat (including reduction in engine performance). They even cited the Rough gas release incident (where helicopters were used to evacuate) as a weak comparison by Spirit because Rough had "three platforms making up the installation".*
- 2.34 *Mr Hepburn explained that CPC (like Rough) is in fact a three jacketed installation and therefore a very relevant comparator. The accommodation platform is separate from the processing platform and the wellhead platform. So as described in that situation, Spirit would have the same luxury, assuming that the emergency shut down valves would work to actually perform an evacuation by helicopter and not evacuate by lifeboat.*

#### **Post Hearing Submission:**

- 2.35 *Helicopter evacuation via the bridge-link platform was successfully deployed at the Rough platform in February 2006 where the central platform was engulfed by fire but the bridge-linked accommodation platform helideck remained unimpaired and able to support*

*successful helicopter evacuation. A comparable evacuation at Elgin Franklin platform is a further example.*

- 2.36 *It would appear that the Applicant and its safety consultant (DNV) do not understand CPC and how the design provides protection in a major fire / explosion event. Events requiring emergency evacuation are well understood, and accounted for in the design of CPC – the bridge-linked design locates lifesaving and evacuation facilities some distance from the process hazards which:*
- 2.36.1 *minimises the potential for impairment of the helideck*
  - 2.36.2 *protects people to provide time for a controlled emergency evacuation*
  - 2.36.3 *Successful evacuation by helicopter from CPC is credible given the bridge-linked design of the asset. It was successfully deployed at the Rough platform in February 2006 where the central platform was engulfed by fire but the bridge-linked accommodation platform helideck remained unimpaired and able to support successful helicopter evacuation. A comparable evacuation at Elgin Franklin platform is a further example.*
- 2.37 *The examples offered by the Applicant are not representative of emergency evacuation scenarios on CPC; included assets of very different design (e.g. Piper Alpha, Deepwater Horizon and Ocean Odyssey) and where the nature of the initial event so catastrophic that the platform was rapidly engulfed by fire (Mumbai High).*
- 2.38 *I note also that other events requiring emergency evacuation pose no potential for helideck impairment e.g. an emergency evacuation would be required for an impending ship collision, extreme weather or medical evacuation.*

Safety Case:

- 2.39 The Applicant made submissions that Mr Hepburn on behalf of Spirit did not comment on the safety case. The Applicant's safety consultant on behalf of the Applicant stated that:
- 2.39.1 if there is nobody on board (as would alleged at the NUIs) then there is no risk to personnel, and therefore the operator would not be operating outside of its safety case;
  - 2.39.2 best practice is to get a weather forecast "a few days ahead" as "they are now very accurate these days" and that Spirit would not send personnel where there was a risk they could not be picked up.
  - 2.39.3 That if the weather is not good, Spirit simply should not visit the NUIS and go when there is better weather.
  - 2.39.4 That this is a "minor operational nuisance" and Spirit should simply shut-down its platforms and revisit maintenance when the weather is improved.
- 2.40 Mr Hepburn responded that it is correct that the safety case is about protection of personnel but not only when they are on board an installation. The safety case imposes a duty for Spirit to maintain the installation in the right way. If Spirit cannot get there to maintain it, then Spirit would not be able to send people there.
- 2.41 **Post-Hearing Submission:**
- 2.42 *Equipment and infrastructure, including Safety and Environmental Critical Elements (SECE), breakdowns and failures cannot be assumed to occur only when no one is present. The timely execution of maintenance of these features reduces the risk of such failures, and therefore the risk to personnel on the NUI.*
- 2.43 *Spirit is well versed in factoring weather conditions into its maintenance plans. Spirit undertakes planned safety & environmentally critical maintenance (along with business*

critical work) on NUI's in line with a 365 day schedule agreed with Spirit's aviation provider. Many of these scopes require the services of specialist vendors and equipment, requiring Spirit to plan well in advance and to coordinate aviation and marine services to ensure that maintenance work is completed on time.

- 2.44 *Unavoidably, this is subject to weather conditions. Spirit plans the detailed schedule of its offshore operations with use of offshore weather forecasts issued twice daily, taking into account the 7 day outlook and 10 day scenario forecast. The forecast is used for planning purposes and to ensure compliance with the Spirit Energy UK Adverse Weather Guidelines and meeting the requirements under OEUK ERRV (Emergency Response and Rescue Vessel) Management Guidelines to ensure good prospects of rescue and recovery with use of an ERRV in case of a helicopter ditching scenario. Spirit's aviation operator uses the MetOffice's Terminal Airdrome Forecast (TAF) in advance of flights. The TAF forecast is not available multiple days in advance, only applicable to the airdrome locations and surrounding areas, and cannot be used for advanced NUI intervention planning purposes. An aircraft can only depart from Blackpool Airport based on the TAF forecast available on the day.*
- 2.45 *Evidently, Spirit can plan based on weather forecasts for NUI maintenance, but cannot 'plan' for the TAF forecast which ultimately determines whether conditions are suitable for flying, and the applicable flying rules. If required as a result of the TAF forecast, Spirit can change its intervention plan on the day however this has potentially significant knock-on effects that would need to be factored into the 365 day plan. Whilst the flexibility to accommodate a day or two of delay is built into the plan to provide for weather or unforeseen technical issues, cumulative delays and deferment can put Spirit's ability to complete the maintenance work by its due date at significant risk, and this risk would be exacerbated by further limitations on flying conditions.*

#### Decommissioning

- 2.46 The Applicant stated that Spirit's assets were "moving into a decommissioning phase" and that the parties "should be looking to understand how they can co-exist" both now and as Spirit takes forward its CCUS proposals. This prompted a question from the ExA on the decommission date of the assets.
- 2.47 Mr Hepburn explained that the cessation of production for CPC is 2027, plus or minus two years, and that Spirit are not in any way, shape or form looking to decommission the asset at this time. Mr Hepburn stated that his remit at Spirit is to extend the life of the asset to 2030 and beyond with that, and Spirit have a strategy and a roadmap that will facilitate this. Cessation of production is defined by the macroeconomic factors as well, such as gas prices. As per the current gas price model, Spirit certainly have a route that takes it beyond 2027 and out to 2030 and beyond. Mr Hepburn explained that Spirit are working with Harbour Energy to extend the life of its Calder platform as well.

#### Applicant's Calculations

- 2.48 Mr Blackstock on behalf of Spirit stated that AviateQ had calculated the unobstructed airspace requirements based on the aircraft performance graphs, which were included in the AviateQ Report at Appendix 1 of the Written Representation [REP2-171].
- 2.49 Mr Blackstock submitted that it is not possible to do a comparison of those figures with those from the Applicant, because Spirit have not received any information from the Applicant with regards to how those figures have been calculated. The Applicant (unlike AviateQ) have not broken down its calculations into specific distances or sections of the flight manoeuvres.

#### 3.76nm Requirement

- 2.50 Mr Ustich of Spirit Energy stated that throughout the process to date the Applicant has never correctly considered the impact of losing the IMC operations and night operations.
- 2.51 Spirit as an operator will not be able to meet the requirements under its safety case for access to the installation in all environmental conditions. In addition to that, as the weather

is constantly changing offshore, Spirit may be in a position that the aircraft will be able to deploy a team offshore in visual conditions, but at the same time will not be able to either to pick them up when the instrument conditions will apply, or when the aircraft will land and will be stuck offshore as well. That could be a matter of days, not just one overnight.

- 2.52 With respect to the CAA rule change to 3nm, this was a distance which aviation operators came up with on request from the CAA. Spirit's own operation aviation operator is already operating to a three nautical miles ruling that there would not be any night operations or IMC operations below those distances. It is therefore clear that, with the presence of the wind farm, that restriction would apply. This will lead into safety implications due to restraints on flying, which have already been previously discussed by Mr. Hepburn.
- 2.53 The Applicant responded that a 3.76nm buffer would mean that the wind farm project is unviable as it "eats up the majority of the site", and that national policy targets of coexistence would have failed.
- 2.54 **Post-Hearing Submission:** Spirit would refer to Part 3 of its Response to Deadline 3 Submissions which addresses the alleged failure of co-existence and the fundamental issues with respect to site selection and design (as contemplated by national policy).

#### Arc

Mr Ustich of Spirt responded to earlier comments from the Applicant on an alleged 180 degree space of unobstructed airspace to the north of the wind farm. Mr Ustich referred in particular to the Applicant's submission at Appendix 5 of its Deadline 3 submission [REP3-102] which demonstrate that a 180 degree arc is clearly not available.

#### **Post-Hearing Submission**

- 2.55 *The Applicant states that there is an arc of unobstructed airspace 263 degrees clockwise to 90 degrees around CPC and that this allows take off and landings within this space in night VMC and IMC to and from this arc. Spirit disagree.*
- 2.56 *The Applicant does not take into account current helideck restrictions outlined in the Helideck Certification Agency (HCA) asset plate or the requirements for the aircraft to approach and take off into head wind from all directions pursuant to GM1 CAT.POL.H.310(c) & CAT.POL.H.325(c) (Take-off and landing).*
- 2.57 *The aircraft approach from the arc sector can be considered in both VMC and IMC conditions, however the Applicant has omitted to consider the subsequent take-off would then have to be performed into the opposite sector of 90 degrees to 263 degrees. which is predominantly covered by the proposed windfarm. Such take-off into the opposite sector would not be viable based on the distances calculated for OEI take-off in both conditions unless 3.76nm is available. By the same token, take off would be possible but landing would not as the aircraft will have to approach from the windfarm direction to take-off into the arc.*
- 2.58 *In addition, the Arc of 263 to 90 degrees does not take into account the relative position of the CPC helidecks. Neither does it consider helideck restricted approach sectors based on platform obstacles, and specific wind limitations under the HCA certification. Spirit would refer to Figure 3.1 at page 11 of its Deadline 3 submission [REP-102].*

#### Corridor

- 2.59 The Applicant's aviation consultant made submissions with respect to the corridor to south west being effective mitigation that would facilitate continued IFR flying.

#### **Post-Hearing Submission:**

- 2.60 *Spirit acknowledge that the Examining Authority stated that they understood the parties submissions with respect to the corridor and did not invite further submissions. For the avoidance of doubt, Spirit do not accept that IMC Take Off Corridor is credible:*



- 2.60.1 *Spirit cannot accept the IMC Take-Off Corridor as it will only mitigate instances when the wind is coming from the corridor direction towards CPC. As per GM1 CAT.POL.H.310(c) & CAT.POL.H.325(c) (Take-off and landing) regulations, under normal operations the aircraft should approach and take off into the wind (head wind).*
- 2.60.2 *The MetOcean criteria data analysis outlines that only 22% of wind comes from the direction of the corridor proposed. The Applicant has failed to demonstrate how this applies to landing at CPC and take off in the remaining 78% when the wind is not from this direction, or how it meaningfully mitigates take-offs and landings at all from Calder or DP6.*
- 2.60.3 *Under the new proposed CAA regulations, the IMC corridor proposal will not be able to provide any mitigation for IMC take-off and landing to/from CPC, DP6 and Calder platform in both day and night conditions or for VMC take off and landings to/from CPC, DP6 and Calder Platform in night conditions without a CAA dispensation under the Alternative Means of Compliance (AltMoc) process. Spirit is not aware of such AltMoc being granted elsewhere in the UK.*

#### Protective Provisions and Technical Meetings

- 2.61 The ExA sought an update on progress and for minutes of meetings to be shared at Deadline 4.
- 2.62 ***Post-Hearing Submission:*** *The ExA is directed to Part 4 of Spirit's Response to the Applicant's Deadline 3 submissions.*

### 3. **Written summary of ISH4 submissions**

#### **Item 1: Introductions**

- 3.1 Introductions to Spirit representatives: Mr James Gibson (Eversheds Sutherland, Partner) Ms Rae-Anne Marr (Spirit Energy, Senior Legal Counsel) Ms Susan Gair (Spirit Energy, Principal Commercial Specialist)
- 3.2 Spirit's participation was in relation to Agenda item 5 (protective provisions in the dDCO).

#### **Item 5: Protective provisions in the dDCO**

- 3.3 There was a discussion on paragraph 5 of Schedule 3, Part 3 of the dDCO. Mr Gibson on behalf of Spirit confirmed that the prohibition of infrastructure within the WTG aviation corridor should include OSPs and temporary surface infrastructure. Spirit's position that the principle of the aviation corridor was not acceptable was further reiterated.
- 3.4 It was stated that the draft protective provisions proposed by the Applicant were inadequate. They do not encompass a number of the protections Spirit has asked for throughout its Representations. By way of an example, the "additional costs" mechanism was extremely narrow and drafted in a way that plainly does not allow for cost recovery of mitigation measures that Spirit require. This includes placing a "best endeavours" obligation on Spirit to mitigate its costs (a very high bar that is not consistent with the duties on beneficiaries of protective provisions in many other DCOs). Any costs incurred are also subject to an approval process by the Applicant – affording it almost complete discretion to determine costs incurred are not necessary and Spirit has not met its best endeavours obligation around mitigation of such costs. There is no provision for consequential costs. The provisions are also subject to an unknown aggregate cap on liability for such costs. Capping such costs is not appropriate.

- 3.5 Together there is nothing about this mechanism that provides comfort to Spirit that additional costs that Spirit foreseeably could incur as a consequence of the proposed development would actually be recovered.
- 3.6 Furthermore there is no indemnity protection afforded to Spirit to cover damage or business interruption to Spirit's assets or infrastructure as a consequence of the wind farm development. And no requirement on the Applicant to provide any associated insurance policy. These protections notably have been included in the Morgan and Mona Transmission DCO but are conspicuous by their absence in the draft Order submitted by the Applicant at Deadline 2 [REP2-002].
- 3.7 ***Post-Hearing Submission:*** *Against this background, Spirit note the statement by the Applicant at paragraph 29 of its Deadline 3 submission [REP3-070]. Here the Applicant claims that "...the commitment to pay additional costs ensures no residual impact on Spirit (and Harbour) and the affected assets. This is wholly supported by (and goes further than) the provisions of the NPSs on impacts on other offshore infrastructure." Spirit completely disagree with this statement reflecting on the terms of the current protections for its benefit in the draft DCO submitted at Deadline 2.*
- 3.8 *The ExA is otherwise directed to Part 4 of Spirit's Response to the Applicant's Deadline 3 submissions.*
- 3.9 Spirit and the Applicant agreed that discussions regarding a potential side agreement would progress in tandem with protective provisions negotiations.

**Eversheds Sutherland (International) Limited**

**18 February 2025**