



SHEPHERD+ WEDDERBURN

RESPONSES TO DEADLINE 5 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 6 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 to points raised by the Applicant in the following deadline 5 submissions:
- 1.4 The Applicant’s responses to the second written questions of the examining authority (“**ExQ2**”) [REP5-070]; and
- 1.5 The Applicant’s comments on deadline 4 submissions [REP5-060].

## 2. The operational lifetime of the Ørsted IPs’ assets

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- 2.1 In its deadline 5 submissions, the Applicant has stated that further consents are required for the Ørsted IPs’ assets to continue operating beyond their initially anticipated lifetimes. As such, the Applicant has maintained that its approach to assessing the Project’s environmental effects is appropriate.
- 2.2 This approach is incorrect and, for the record, the Ørsted IPs wish to correct the Applicant’s statement in its response to deadline 4 submissions that “...*it is agreed by all there are at least some additional consents required for an extension* [of the assets’ lifetimes] ...”. As outlined in a number of previous submissions,<sup>1</sup> several of the Ørsted IPs’ assets do not require any further consents or licences to continue to operate beyond their initially anticipated lifetimes.
- 2.3 The Ørsted IPs accept that some of the assets *may* require further marine licences for maintenance activities. However, whether those are in fact required is a matter which will be considered closer to the time.
- 2.4 In any case, a maintenance marine licence would not, in itself, predicate the decision to extend the lifetime of a windfarm. It is always possible an existing asset will require a new marine licence for certain activities (for example, where an unanticipated need for specific maintenance campaign arises which is not within the scope of existing licences). Notwithstanding this possibility, it is accepted by industry and decision makers that existing infrastructure must be included in environmental assessments for new developments. It would be irrational to exclude any of the Ørsted IPs assets from the assessments for the Project on the grounds that a future licensing process may be required (and particularly in circumstances where the core operational consents are in place). Failure to include Barrow would be a failure to accurately describe the environmental baseline and its likely evolution as required by the of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 2.5 As explained in detail in previous submissions,<sup>2</sup> none of the operational consents (section 36 consents and development consent orders) are subject to a time expiry or a requirement to decommission by a particular date. Therefore, none of the assets require a new or varied operational consent to continue operating.
- 2.6 This position has been confirmed by the Secretary of State in respect of the two oldest of the Ørsted IPs assets in particular (Barrow and Burbo Bank offshore windfarms). In a letter to Ørsted responding to queries regarding the lifetime of these assets [REP3-110], the Secretary of State stated that any limitation to the operational lifetime of a consent is “...*a key provision and one would therefore expect to see it set out explicitly on the face of the consent*”. The Ørsted IPs

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<sup>1</sup> In particular, [REP4-077].

<sup>2</sup> [REP4-077], [REP3-108], [REP3-109], [REP3-110].

have previously provided a Scottish example of a time limited section 36 consent [REP4-077] which demonstrates this principle.

- 2.7 In respect of the assets discussed in the letter, the Secretary of State outlined it had “...*not found anything which would lead him to conclude that the consents for which he is the competent authority require variation or the supply of additional consents, licences or permissions to secure the Secretary of State’s approval to enable the continued operation of the wind farms*”.
- 2.8 In the Applicant’s response to ExQ2, it has outlined that its interpretation of the Secretary of State’s letter is that a separate approval is required to continue operating the assets. This interpretation is plainly wrong and is misleading. When read as a whole, it is clear the Secretary of State’s position is that:
- 2.8.1 any limitation to the operational lifetime of a development is a key provision which would be explicitly stated on the face of a consent;
  - 2.8.2 it is theoretically possible that operational lifetimes of consents may be limited through the ways in which the provisions in the consents interact with the information provided in the application documents;
  - 2.8.3 no such limit has been created by the consents and application documents for the assets discussed in the letter (Barrow and Burbo Bank);
  - 2.8.4 therefore, no variation of the existing consents and no new consents or licences are required in respect of the authorisations for which the Secretary of State is the competent authority.
- 2.9 In light of the above information, it is reckless and wrong not to incorporate Barrow into the environmental assessments for the Project. Such an approach risks the effects of the Project not being assessed on a realistic basis including because it results in an inaccurate environmental baseline.
- 2.10 It is also therefore not correct, as asserted by the Applicant in response to ExQ2 (question 200I2) that HRA would be required in respect of the continued operation of the developments under their operational consents (being section 36 consents and development consent orders). This is because no approval process is required to extend the lifetimes of these operational consents. It is accepted that HRA could apply to any future marine licences which may be required for maintenance activities or ad-hoc campaigns. HRA in this context would be limited to the activities authorised by the marine licences. We emphasise the Applicant’s position in this respect is hypocritical, given its refusal to incorporate Barrow in its ornithology assessments, in part on the grounds that it would not impact the outcomes of such assessments.
- 2.11 It is noted that the applicants in the Morgan and Mona projects both provided updated information to incorporate Barrow into their cumulative and in-combination assessments. Natural Resources Wales flagged this discrepancy in its deadline 5 submission [REP5-084] and recommended that the in-combination assessments be updated to include Barrow.

### **3. Future viability**

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- 3.1 In [REP5-060], the Applicant has stated it does not consider “future viability” in the NPS-EN3 extends to decisions regarding lifetime extensions.
- 3.2 The Ørsted IPs would note that when discussing the continued operation of the assets, formal applications to repower or extend the lifetimes of the consents are not contemplated. As noted above, because the operational consents are not subject to a time limit, this is a commercial decision regarding whether to continue operating (or alternatively, apply for necessary decommissioning consents). Such decisions fall squarely within the ordinary meaning of “future viability”.
- 3.3 Regardless, the Ørsted IPs consider the wording used in the NPS-EN3 is deliberately broad. There is nothing in the NPS-EN3 to suggest that the interpretation argued by the Applicant was intended. In light of recent statements by the UK Government and the Crown Estate regarding the importance of maximising the lifetime of existing assets and supporting lifetime extensions (as described in [REP3-108]), there can be no doubt that paragraph 2.8.347 of the NPS-EN3 should be interpreted to include effects on the continued operation of existing assets beyond

their initially anticipated minimum lifetime. The Applicant is attempting to read in a limitation on this provision which is not justified.

3.4 The Applicant has flagged that other factors, beyond wake effects, will be relevant to decisions regarding the lifetime of the assets. The Applicant's implication appears to be that, because of this, wake effects should not be treated as impacting future viability.

3.5 The text of paragraph 2.8.347, in full, is:

*"Where a proposed development is likely to affect the future viability or safety of an existing or approved/licensed offshore infrastructure or activity, the Secretary of State should give these adverse effects substantial weight in its decision-making."*

3.6 As discussed in the signposting document submitted alongside this submission, the test is whether the development is "*likely to affect*" future viability. It is not required to be the only factor which affects the future viability of an asset. As described in previous submissions, a number of factors will be relevant to decision making regarding the continued operation of the Ørsted IPs assets, many of which are difficult to predict with certainty. However, the wake effects of the Project (including the cumulative wake effects with the Mona and Morgan developments) on the Ørsted IPs' assets have been assessed with as much certainty as possible. Left unmitigated, the wake effects are essentially a guaranteed adverse effect which will impact decision making regarding the future of the Ørsted IPs' assets from the date any development consent order is granted. The Ørsted IPs have provided considerable and detailed evidence that the Project (and in particular, the cumulative effects of the Project with the Mona and Morgan developments) will adversely impact decisions regarding the lifetime of their assets. Therefore, the test in paragraph 2.8.347 has been met.

#### **4. Other issues**

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4.1 The Applicant has stated in its response to deadline 4 submissions that:<sup>3</sup>

*In terms of EIA, the Applicant updated its Greenhouse Gas Assessment at Deadline 4 to reflect the Ørsted IPs' assessment (REP4-062), and so there can be no doubt that the Applicant has submitted a full and complete Environmental Statement.*

4.2 The Ørsted IPs do not agree. As outlined in their response to deadline 4 submissions [REP5-092], the assessment does not assess a realistic worst-case scenario, in particular because it does not assess a scenario in which the Ørsted IPs' assets are decommissioned earlier than would have otherwise been possible.

**Shepherd & Wedderburn LLP**

**15.04.2025**

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<sup>3</sup> At p 216.