



SHEPHERD+ WEDDERBURN

SUMMARY AND SIGNPOSTING DOCUMENT 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

- 1.1 This summary and signposting document 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 submission provides a summary of the Ørsted IPs’ position on the issues they have raised throughout the examination. This submission is provided alongside the Ørsted IPs response to deadline 5 submissions.

2. Ecology, Aviation, Shipping and Navigation

- 2.1 Throughout this examination, the Ørsted IPs have raised concerns regarding shipping and navigation, ecology and aviation.
- 2.2 The Ørsted IPs consider their concerns as outlined in previous submissions largely represent their position on these matters. However, for completeness, the Ørsted IPs summarise their up-to-date position below:

2.2.1 In respect of shipping and navigation, the Ørsted IPs have raised concerns regarding the Applicant’s assessment of allision risk at Barrow Offshore Windfarm and West of Duddon Sands Offshore Windfarm and concerns regarding the cumulative effects of the Project (along with other developments) on their assets. The Ørsted IPs retain concerns about the in isolation and cumulative impacts of the Project, particularly in relation to project vessels and displacement of third-party traffic. The Ørsted IPs are 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 appropriately (in particular, 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 or Emergency Response Cooperation Plan. The Ørsted IPs therefore seek a formal commitment to appropriate engagement with the Ørsted IPs including:

- (i) being specifically named as a consultee in respect of the Marine Navigation Engagement Forum; and
- (ii) ensuring the Ørsted IPs have the opportunity to review the Vessel Traffic Management Plan (“**VTMP**”) pre-submission to the Marine Management Organisation pre-construction of the Project. Such a commitment would be in the interests of navigational safety within the vicinity of the Ørsted IPs assets, and could be secured by naming the Ørsted IPs as a consultee in the VTMP.

Additionally, in light of the cumulative risk posed by shipping and navigation at their assets, the Ørsted IPs expect close co-operation on the Marine Pollution Contingency Plan and Emergency Response Co-operation Plan to ensure mutually beneficial outcomes.

The Ørsted IPs reiterate their requests for the commitments to engagement noted above.

2.2.2 In respect of ecology, a number of concerns raised in their relevant representations and written representation [REP1-112] have been resolved. However, the Ørsted IPs remain concerned regarding the exclusion of Barrow Offshore Windfarm from the Applicant’s cumulative and in-combination effects assessments. For the reasons

explained in previous submissions¹ and in the Ørsted IPs' response to deadline 5 submissions, there is no reasonable basis for excluding this asset from the respective assessments. Failure to include Barrow is irrational and 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 ("**EIA Regulations**"). Barrow is able to continue to operate beyond 2030 without any further operational consents and it is not for the Applicant to make assumptions regarding a potential decommissioning date, especially given that the Ørsted IPs have reiterated the likely continued operation of the windfarm.

- 2.2.3 In respect of aviation, two of the Ørsted IPs (Walney Extension Limited and Burbo Extension Limited) have raised concerns regarding the impacts of the Project on the radar mitigation solution being developed in respect of Warton Aerodrome. The Ørsted IPs are content to rely on their previous submissions² in respect of this matter.

3. Position on energy yield/wake effects

- 3.1 The Ørsted IPs key outstanding concern is the Project's significant predicted adverse effect on the energy yield of their assets (both individually and cumulatively with the Mona and Morgan developments) through impacts on wake.
- 3.2 The Ørsted IPs arguments on this matter have been well canvassed throughout the examination. In this submission, the Ørsted IPs consolidate their key arguments and signpost previous relevant submissions.
- 3.3 The Applicant has failed to comply with its obligations under the NPS-EN3 and the North West Marine Plan to provide for coexistence of the Project with the Ørsted IPs' existing assets. The Applicant has failed at every juncture to appropriately engage with the Ørsted IPs in respect of assessing the Project's wake effects, accounting for wake effects in project design and addressing the predicted wake effects through mitigation.
- 3.4 From the Project's inception, the Applicant has chosen to take an approach which undermines the clear policy direction in the NPS-EN3, despite:
- 3.4.1 having accepted the outcomes of the wake impact assessment ("**Wake Report**") prepared by Wood Thilsted³ on behalf of the Ørsted IPs, which predicts material impacts on the energy yield at the Ørsted IPs' assets. We note that Wood Thilsted is an independent consultant and have recently acted for the Applicant in the Outer Dowsing examination – their approach to wake assessment is being respected and acknowledged in the industry;⁴ and
- 3.4.2 the considerable evidence provided by the Ørsted IPs demonstrating the impacts the predicted wake loss will have on the future viability of their assets (in particular, as outlined in the Ørsted IPs' response to ExQ2 [REP5-093]).
- 3.5 As explained in more detail below and in previous submissions, this approach has resulted in a material effect of the Project being left unmitigated. This effect is likely to impact the future viability of the Ørsted IPs' assets and as such will need to be given "*substantial weight*" by the Secretary of State in decision making as per paragraph 2.8.347 of the NPS-EN3.
- 3.6 Additionally, for the reasons set out in the Ørsted IPs' response to deadline 4 submissions [REP5-092] the Applicant's environmental assessment is inaccurate because the assessment of the Project's GHG emissions does not reflect a realistic worst-case scenario in terms of net emissions. As explained in that submission, the updated GHG assessment prepared by the Applicant does not assess a scenario in which total renewable energy generation is lost at the Ørsted IPs assets as a result of wake impacts.

¹ In particular, REP3-108], [REP3-109], [REP3-110], [REP4-075], [REP5-092] and [REP5-093].

² [RR-014], [RR-089], [REP1-112].

³ In its deadline 5 submission, the Applicant accepted that any assessment it might carry out would not be significantly different to that produced by the Ørsted IPs and at issue specific hearing 3, the Applicant accepted the parameters used in the Wake Report were reasonable.

⁴ [REP3-112].

4. Decision-making framework in respect of wake effects

- 4.1 The decision making in respect of the Project requires to be undertaken in accordance with section 104 of the Planning Act 2008. This requires that, in deciding any application, regard must be had to any National Policy Statement which has effect. In the context of the current application, it is likely that up to three National Policy Statements would be relevant (EN-1, EN-3 and EN- 5). NPS-EN3 is of particular relevance to the issues the Ørsted IPs have raised. In addition, the Secretary of State is also obliged to decide the application in accordance with the relevant National Policy Statement (subject to exceptions listed in subsections (4) to (8)).
- 4.2 The Secretary of State must have regard to any marine policy documents determined in accordance with section 59 of the Marine and Coastal Access Act 2009. In the case of the Project, the relevant marine plan is the North West Marine Plan.
- 4.3 The impact of the NPS-EN3 and the North West Marine Plan are considered below.

NPS-EN3

Assessment of effects under Paragraph 2.8.197

- 4.4 The starting point for assessing the effects of a proposed windfarm on existing sea users under the NPS EN-3 is paragraph 2.8.197, which provides that:

Where a potential offshore wind farm is proposed close to existing operational offshore infrastructure, or has the potential to affect activities for which a licence has been issued by government, the applicant should undertake an assessment of the potential effects of the proposed development on such existing or permitted infrastructure or activities.

- 4.5 There has been no dispute in this examination that this provision and those which flow from it apply to existing offshore wind development. However, for completeness, we note that it is clear the provisions of the NPS-EN3 relating to other offshore infrastructure apply to other offshore wind development.
- 4.6 It has been argued in previous examinations that this section of the EN-3 does not apply to other offshore wind projects, if this section of EN-3 was interpreted as not applying to other offshore wind infrastructure, there would be no protection, for example, for interference with existing inter-turbine array cables within a windfarm but protection would be provided for a transmission interconnector. Such an interpretation would be irrational.
- 4.7 We note that this argument was considered and dismissed in the *Awel y Mor* decision, where the examining authority found that “... *had the content of NPS EN-3 specifically intended to exclude existing wind farm development from the application of NPS EN-3, then this would have been made explicitly clear.*”⁵
- 4.8 There is no definition of ‘other offshore infrastructure’ in the NPS-EN3, and therefore it should be given a broad interpretation. It is clear when read as a whole that the intention of the relevant provisions of the NPS-EN3 is to ensure the effects of an application on all authorised offshore infrastructure (being existing consented infrastructure which is operational and infrastructure which is authorised but not yet operational as per paragraph 2.8.196). As noted in *Awel y Mor*, if other offshore wind infrastructure was intended to be excluded from this analysis, that would be explicitly stated.
- 4.9 The Applicant has argued that the Project is not “close” to the Ørsted IPs’ assets and therefore an assessment of the Project’s potential effects is not required. As explained in detail in previous submissions [REP1-103] and [REP3-108] the Applicant has provided no reasonable rationale for limiting the application of this provision in the manner proposed. The Applicant relies on compliance with separation distances established in the Crown leasing process, and a general study by Frazer-Nash regarding wake effects as justification for this position.
- 4.10 As explained in previous submissions (in particular, [REP2-040]), neither the leasing distances nor the study are an effective proxy for the requirement to undertake appropriate individual assessment. The Crown Estate has acknowledged [REP3-079] that the 7.5km separation distance was used for the purpose of processing project proposals in the tender only, and that the location of a windfarm within a lease area is a matter for developers to design for. The Crown

⁵ At 5.14.78 of the examining authority’s recommendation report.

Estate has also acknowledged that distance was just one factor in understanding wake effects and that the underlying wind characteristics are critical. This is one of the principal issues with the proposed Irish Sea projects. The Project sits within the common wind directions of many of the existing assets in the Irish Sea.

- 4.11 The Frazer-Nash study takes some generic, theoretical offshore wind farm pairs and looks at the balance in total production based on different densities and separation buffers. It cannot be relied on in the consenting process which aims to assess effects of a particular project on existing infrastructure. In any event, this study is largely irrelevant in light of the wealth of evidence the Ørsted IPs have produced regarding actual wake effects.
- 4.12 There is no definition of “close” under the NPS and therefore, what is considered “close” must be determined by reference to the likelihood of potential effects – there is no other meaningful basis for making this determination.
- 4.13 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. 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.

Coexistence with existing infrastructure

- 4.14 In breach of clear direction in the NPS-EN3, the Applicant has failed to engage appropriately with the Ørsted IPs to ensure that the Project can coexist with existing infrastructure.
- 4.15 The NPS-EN3 flags that, from site selection, co-existence with existing infrastructure is an important consideration. For example, paragraph 2.8.44 provides: *“There may be constraints imposed on the siting or design of offshore wind farms because of the presence of other offshore infrastructure, such as oil and gas, Carbon Capture, Usage and Storage (CCUS), co-location of electrolyzers for hydrogen production, marine aggregate dredging, telecommunications, or activities such as aviation and recreation.”* Paragraph 2.8.18 flags the relevance of marine plans during site selection including in relation to existing activities *“Marine plans will help applicants understand generic potential impacts of their proposal at an early stage e.g., in relation to other activities, or where there are marine protected areas.”* At paragraph 2.8.345, applicants are directed that site selection and design should be undertaken with *“...a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries”*.
- 4.16 The NPS-EN3 directs applicants to engage with parties who will be impacted by a proposed development, including as follows:
 - 4.16.1 2.8.48 provides: *“Applicants are encouraged to work collaboratively with those other developers and sea users on co-existence/co-location opportunities, shared mitigation, compensation and monitoring where appropriate...”*;
 - 4.16.2 2.8.200 directs applicants to: *“engage with interested parties in the potentially affected offshore sectors early in the pre-application phase of the proposed offshore wind farm, with an aim to resolve as many issues as possible prior to the submission of an application”*;
 - 4.16.3 2.8.203 provides that such engagement *“should be taken to ensure that solutions are sought that allow offshore wind farms and other uses of the sea to co-exist successfully”*;
 - 4.16.4 2.8.344 provides that applicants are expected to *“work with the impacted sector to minimise negative impacts and reduce risks to as low as reasonably practicable”*.
- 4.17 The Ørsted IPs first raised the issue of wake effects on their assets in June 2023, in response to pre-application consultation. Despite these concerns, on the basis of the Frazer-Nash report and compliance with The Crown Estate’s leasing boundaries, the Applicant decided that the potential for wake effects did not need to be considered further (at 17.129 of [APP-054]). For reasons

outlined above and in previous submissions,⁶ it was not appropriate for the Applicant to rely on these documents as justification for not engaging with the Ørsted IPs in respect of this issue.

- 4.18 As a result of the Applicant's dismissal of these concerns, no attempt was made to assess and understand the potential wake effects of the Project and wake effects were not considered in the design of the Project.
- 4.19 Due to the Applicant's lack of engagement on this issue, the Ørsted IPs were required to commission the Wake Report, in order to understand the effects on their assets. The Wake Report has predicted the Project, both individually and cumulatively, will have a material impact on the energy yield at the Ørsted IPs developments. Having previously asserted that the value of any assessment would be limited,⁷ in its most recent submission on the point [REP5-060] the Applicant relies on this assessment as justification for not carrying out its own assessment (in the event decision makers agree assessment was required).
- 4.20 The Applicant now asserts that it is not possible to mitigate the wake effects of the Project. The Applicant takes this position having made no attempt at any stage of the Project's development or this examination to investigate possible mitigation (or even understand effects) and having provided no evidence that this is the case. No attempt whatsoever has been made by the Applicant to mitigate the effects of the Project on the Ørsted IPs and therefore the Applicant's approach falls far below the standard set by the NPS-EN3 provisions outlined above.

Significance of effect

- 4.21 We understand there has been discussion in another examination⁸ regarding whether wake effect is required to be "significant", in the EIA sense, to be dealt with in accordance with the policies relating to existing infrastructure. The evidence previously submitted by the Ørsted IPs demonstrates that the wake effects of the Project would result in a significant effect if considered using that approach.
- 4.22 The Wake Report predicts the cumulative wake effects of the Project along with the Morgan and Morecambe developments will be up to 5.21% AEP and on a project alone basis the effects will be up to 1.37% AEP. The Ørsted IPs have been transparent in providing an economic analysis of what these losses mean for the future viability of their assets [REP5-093].
- 4.23 Applying the Applicant's EIA methodology outlined in chapter 17 of its EIA, it is clear that the wake effects of the Project would meet the significance threshold under the EIA:
- 4.23.1 In terms of 'sensitivity/value' - the assets are of national importance as they represent a significant contribution to the UK's renewable energy targets. The Ørsted IPs have explained how offshore windfarms become more vulnerable as they come off market support mechanisms [REP5-093]. This has been explained in respect of each of the assets. At this point in the project life the assets are particularly vulnerable to adverse impacts on their energy yield. Therefore, they are of 'high' sensitivity/value as per table 17.6 of chapter 17 of the EIA.
- 4.23.2 The predicted wake effects are also of a 'High' magnitude in accordance with table 17.7. The wake effects are fundamental to the operation of the assets, and due to the lack of mitigation proposed, will be permanent and irreversible.
- 4.23.3 Therefore, the effect is 'Major' in accordance with the significance of effect matrix at table 17.8. We note that, even if one of the factors described above were reduced by one level, the overall effect would remain 'Major'. Major in this context has been defined by the Applicant as follows: *"Very large or large change in receptor condition, both adverse or beneficial, which are likely to be important considerations at a regional or district level because they contribute to achieving national, regional or local objectives, or could result in exceedance of statutory objectives and/or breaches of legislation."*

⁶ In particular, [REP2-040]

⁷ [REP2-027] at WR-112-06.

⁸ EN010130 – Outer Dowsing Offshore Wind (Generating Station).

- 4.24 As the Ørsted IPs have previously highlighted, the level of wake effect predicted at their assets is likely to adversely impact decision making regarding the future of the assets and therefore is likely to impact on national renewable electricity ambitions.
- 4.25 Given the level of effect, the Applicant's approach in refusing to assess the effect and subsequently to even discuss possible mitigation is inappropriate. It is noted that mitigation has been provided in order to reduce the level of adverse effect on oil and gas infrastructure. There is no reason mitigation should not also be provided for the Ørsted IPs.
- 4.26 In addition, the Ørsted IPs consider that the approach to coexistence with existing infrastructure is a separate exercise to assessing environmental effects in the EIA. Providing for coexistence is a fundamental principle of marine policy and reflected in the NPS-EN3. In effect, there needs to be consideration and findings by the decision maker in relation to coexistence. In addition, however, the assets are material assets and included in the Applicant's EIA assessment (Chapter 17) and, in this context, there would also be potential environmental impacts arising from the economic consequences of the Project on the Ørsted IPs assets (being the loss in overall renewable energy generation and therefore GHG reductions).

Mitigation

- 4.27 The Applicant has asserted that no mitigation is possible for the wake effects of the Project. As noted throughout this submission (and in previous submissions), the Ørsted IPs do not agree this is the case. The Applicant has failed to even consider possible mitigation, despite the early stage at which this significant effect was raised and has not demonstrated any evidence to support its position that mitigation is not possible.
- 4.28 As flagged in the Ørsted IPs' deadline 4 submission [REP4-076], a number of options exist to mitigate wake effects beyond increasing the distance between windfarms. These include design changes such as installing a smaller number of larger turbines and reducing density at the site, reducing temporal overlap between projects and operational measures including wind sector management and wake steering. As outlined in [REP4-076] alternative mitigation measures were recently implemented in the German North Sea, where, as a result of concerns raised by existing sea users, the capacity of proposed sites for offshore windfarms was reduced by 50%.
- 4.29 Additionally, the Applicant has stated that there is no policy framework to mitigate the effect through financial avenues. For the reasons outlined in [REP4-076], we do not agree this is the case. As noted in that submission, while compensation is not specifically mentioned, the expectation of the NPS-EN3 is clearly that applicants for new development will implement best efforts to engage with existing sea users on adverse effects and identify solutions. This is how fisheries coexistence has been managed. The Ørsted IPs consider the expectation is that applicants take a broad approach to addressing adverse effects, which could include compensation.
- 4.30 There is considerable precedent for wind farm developers providing for commercial compensation for effects of development. As noted above, fisheries coexistence typically includes compensation measures. The Applicant's Outline Fisheries Liaison and Co-Existence Plan [REP5a-025] notes that, post consent, the plan will be updated to include a fisheries compensation strategy, which will provide for commercial compensation where required. Additionally, protective provisions regularly deal with commercial losses. For example, the Hornsea Four Offshore Wind Farm Order 2023 contains protective provisions which provide for Network Rail to be compensated for costs, losses and expenses incurred as a result of the development.⁹ This mechanism is not unusual in development consent orders for offshore wind development. The Applicant has made no attempt to avoid, reduce, mitigate or compensate the Ørsted IPs for the adverse effects of the Project.

Decision making

- 4.31 Decision-making must be made in accordance with paragraphs 2.8.341-2.8.348 of the NPS-EN3. Of particular relevance are:
- 4.31.1 Paragraph 2.8.345, which provides: "*the Secretary of State should be satisfied that the site selection and site design of a proposed offshore wind farm and offshore*

⁹ Schedule 9, part 4 paragraph 16.

transmission has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries.”

- 4.31.2 Paragraph 2.8.347, which provides: “*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*”;
- 4.31.3 Paragraph 2.8.348, which provides: “*Providing proposed schemes have been carefully designed, and that the necessary consultation with relevant bodies and stakeholders has been undertaken at an early stage, mitigation measures may be possible to negate or reduce effects on other offshore infrastructure or operations to a level sufficient to enable the Secretary of State to grant consent.*”
- 4.32 The Applicant has made absolutely no attempt to account for the impacts of wake loss on the Ørsted IPs in the site selection and design of the Project, despite the considerable evidence provided by the Ørsted IPs demonstrating the significant adverse economic effects of the Project on their assets. Therefore, the Secretary of State cannot be satisfied of the requirement in paragraph 2.8.345.
- 4.33 In respect of paragraph 2.8.347, the Ørsted IPs position throughout this examination has been that the unmitigated wake effects of the Project, and in particular its cumulative effects with the Mona and Morgan developments, are likely to affect the future viability of their assets. The Ørsted IPs have provided considerable evidence to support this position including:
 - 4.33.1 Response to action point 23 [REP4-077] which explains that each of the assets are able to continue operating beyond their initially anticipated lifetime, from both an engineering and consenting perspective;
 - 4.33.2 Response to ExQ2 [REP5-093], in which the economic impacts of the wake effects are explained. The Ørsted IPs have been as transparent as possible in providing the Examining Authority with the information requested, which demonstrates the sensitivity of the assets as market support falls away and the acute impact wake loss will have on the assets from that point in particular. In summary, the Ørsted IPs have calculated that the lost revenue from wake effect, on an undiscounted basis, will be £68m from the Project alone and £440m cumulatively with the Mona and Morgan developments. This level of effect will undeniably be relevant to decision making regarding the future of the assets.
- 4.34 In summary, wake effects from the Project will occur and these are likely to affect the lifetime of the assets. There are currently no real impediments to the continued operation of the assets (both in terms of consents and practically, in terms of the condition of the assets). However, as explained in [REP5-093], as the assets become fully merchant and profitability becomes more marginal, the wake effects of the Project (and in particular, the cumulative wake effects) could be sufficient to result in continued operation no longer being viable.
- 4.35 It is noted that the standard set by paragraph 2.8.347 is not that the effects of a development must be the only factor which will impact future viability. Nor is the effect required to be certain. Rather, if a development is likely to have any level of effect on the future viability of an existing asset, it should be given substantial weight.
- 4.36 The Ørsted IPs have provided a suite of uncontested evidence that the future viability of their assets is likely to be impacted by the wake effects of the Project. Therefore, the standard in paragraph 2.8.347 has been met.
- 4.37 We note that in another examination, there has been debate regarding the extent to which paragraph 2.8.347 must be couched in EIA terms of significance. The Ørsted IPs consider paragraph 2.8.347 creates a separate test which should not be interpreted through an EIA lens. In this case, the test is whether the Project “*is likely to affect the future viability*” of the Ørsted IPs’ assets. This is clearly an economic consideration. This interpretation is supported by the fact that, in the mitigation section of NPS EN3, paragraph 2.8.262 provides that the Secretary of State may use arbitration as a means of resolving how adverse effects on commercial activities will be addressed. Such a measure does not easily fit within the EIA framework.
- 4.38 Regardless, any effect on future viability is inherently significant, given the potential consequences of the effect. Therefore, the effects of the Project (in particular the cumulative

effects) are significant under an EIA approach. The Ørsted IPs have provided ample evidence that the wake effects of the Project meet this standard. The importance of this effect is underscored in recent statements by the UK Government and the Crown Estate which recognised the importance of maximising the lifetimes of existing assets to ensuring that the UK is able to meet its renewable energy targets. In light of these statements there can be no doubt that the NPS-EN3 should be applied in a way which prioritises coexistence between developments.

- 4.39 In respect of paragraph 2.8.348, the Applicant considers this provision indicates a level of tolerance for residual effects of new developments on existing infrastructure. The clear direction of that provision is that applicants should implement best efforts to address adverse effects, through design, engagement and mitigation. If such steps are taken and adverse effects are reduced, decision makers may be comfortable to grant consent for a development which would otherwise have faced barriers. Having failed to undertake any of these required steps, the Project cannot benefit from this provision.

Marine Plan

- 4.40 In addition to the National Policy Statements, the North West Marine Plan 2021 is relevant. The Ørsted IPs assets are located within the North West inshore and North West offshore Marine Plan area. The NPS-EN3 supports the application of the marine plans to offshore development, in particular regarding the site selection and design:
- 4.40.1 Paragraphs 2.8.17 – 2.8.18 provide that:
- “Marine plans provide a transparent framework for consistent, evidence-based decision making and should be used by applicants to guide site selection.*
- Marine plans will help applicants understand generic potential impacts of their proposal at an early stage e.g., in relation to other activities, or where there are marine protected areas...”*
- 4.40.2 Paragraph 2.8.46 provides that: *“Applicants should consult the government’s Marine Plans (further detailed in Section 4.5 of EN-1) which are a useful information source of existing and known or potential activities and infrastructure.”*
- 4.40.3 Paragraph 2.8.199 provides that: *“Applicants should use marine plans (paragraph 2.8.17-19 of this NPS and Section 4.5 of EN-1) in considering which activities may be most affected by their proposal and thus where to target their assessment [of effects on existing infrastructure]”.*
- 4.41 The ‘Explore Marine Plans’ mapping tool available on the UK Government website is a tool which can be used to identify existing activities and applicable policies within different marine areas. The North West Marine Plan notes that the tool can be used *“...in proposal development and design, including refining the preferred proposal location...”* and encourages proponents and public authorities to use the tool to *“view other known activities, interests, and marine licences that may complement or conflict with a proposal to avoid, minimise or mitigate adverse impacts where possible, prior to the submission of a proposal”* and *“identify appropriate parties with whom to discuss the proposal, for example, regarding areas of future offshore wind potential”*.¹⁰
- 4.42 The tool identifies all of the Ørsted IPs assets as “areas under lease for offshore wind energy” and “Active/In Operation”. The tool also identifies that policy NW-CO-1 is relevant to the area in which the assets are located. Therefore, in accordance with paragraph 2.8.199 of the NPS-EN3 the Applicant should have identified these assets as being important from a coexistence perspective and requiring consideration in assessment.
- 4.43 The North West Marine Plan recognises the value of the existing offshore wind farms that are already operating in the area. It also incorporates policies relating to co-existence including NW-CO-1 which provides that proposals which *“incorporate opportunities for co-existence and*

¹⁰ p 58-59 of the North West Marine Plan.

cooperation with existing activities will be supported.” (page 22). It requires the following approach to assessment:

“Proposals that may have significant adverse impacts on, or displace, existing activities must demonstrate that they will in order of preference:

(a) avoid,

(b) minimise and

(c) mitigate

-adverse impacts so they are no longer significant.

If it is not possible to mitigate significant adverse impacts, proposals must state the case before proceeding.”

- 4.44 This is consistent with the policy aim set out in the adjacent column. This requires conflicts to be managed and may require minimisation of footprint or optimising it where it is not feasible to minimise.
- 4.45 The Marine Plan is further supported by a technical annex. At the bottom of page 26 there is a highlighted box which confirms that the individual Marine Plan Policies must not be read in isolation but as a whole, in the context of the overall policy document. The annex provides a specific section on co-existence at section 5.2. It goes on to discuss generally the concept of co-existence and, under paragraph 106, advises that the application of policy must be supported by an overall assessment of the range of existing activities. This reinforces the need for proper assessment by the Applicant of the issue.
- 4.46 It is only by appropriate understanding that the policy can actually be applied. The Ørsted IPs have already made extensive submissions at previous deadlines about the co-existence policies contained within EN-3. The Marine Plan incorporates important policies recognising the particular importance of co-existence in the marine environment. This emphasis is not surprising given the legislative terms of the Marine and Coastal Access Act 2009. Section 69 sets out the matters that have to be considered in the determination of a Marine Licence. This confirms that the licensing authority is obliged to have regard to the need to prevent interference with legitimate uses of the sea. Co-existence is a concept that is inherent in the marine legislative framework.

Other considerations under section 104 of the Planning Act 2008

- 4.47 In addition to the Marine Plan and NPS considerations, it is considered that the scale of impact that the Project would have, both individually and cumulatively, on the Ørsted IPs assets would engage section 104(2)(d) of the 2008 Act. In particular, the scale of impact on existing assets most of which would be above the NSIP thresholds, is likely to be both important and relevant to the Secretary of State's decision. This is further supported by the prior decision making of the Secretary of State in respect of the Awel Y Mor decision.
- 4.48 The Secretary of State will also have to consider sub-sections (iv) to (viii). These provisions require consideration under sub-section (vii) as to whether or not the adverse impact of the proposed development would outweigh its benefits. As identified in the evidence, there is a very real material risk that the individual and cumulative impacts may impact on the continued operation of the Ørsted IPs' assets. It is not therefore just the marginal loss that requires to be taken into account, but the potential loss of many years' worth of generation if the operation of the assets are prematurely curtailed. The Applicant has chosen not to put forward any mitigation and therefore the full impact should properly be weighed under that paragraph. This paragraph requires a weighing up of all the issues, but in the context of wake loss it would have to be evaluated on an unmitigated basis.

5. Conclusion

- 5.1 The Applicant has chosen not to assist the examining authority or the Secretary of State by providing any detailed information on the assessment of wake effects or the potential benefits and disbenefits of providing realistic mitigation through the further design of scheme.
- 5.2 The Ørsted IPs have confirmed that the predicted level of impact could materially impact the future viability of projects. This does not conform to the long-established policy objective of co-existence. In the absence of any resolution of this issue the examining authority and Secretary

of State should apply significant negative weight to the issue in the decision-making balance. As an alternative, the Secretary of State could invite the Applicant to provide further information or take further steps to seek to resolve this issue whilst the application is live before him.

- 5.3 In addition, the threat to future viability should also be properly accounted for in terms of the Environmental Impact Assessment of the Project both individually and cumulatively. This is a legal requirement of schedule 4 sub-paragraph 5 (f) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. This is a legal requirement because it is part of the mandatory requirement of the regulations. This is a topic that was included in the Applicant's EIA under the heading of "Climate Change". The net emissions of the Project should properly account for the consequences of yield losses and the impact on future viability of other projects.
- 5.4 The above circumstances derive from the Applicant's persistent failure to engage with the updated evidence on wake effects. This is now soundly based on evidence derived from the actual experience of operating offshore windfarms. The Applicant's approach fails to comply with EN-3 and is not consistent with the decision making undertaken in respect of the Awel Y Mor project in September 2023.
- 5.5 The Applicant should be required to take wake loss into account in terms of the final design of the Project. Notwithstanding the imposition of a DCO requirement to this effect, a material residual risk to the Ørsted IPs assets remains. Against that background, the Secretary of State may want to consider the utilisation of an arbitration provision to attempt to resolve this outstanding issue.
- 5.6 Similar measures have been used in the past in terms of the approach to coexistence between offshore wind and oil and gas infrastructure in the form of the so-called 'Oil and Gas clause' that features in Crown Estate leases, as well as between oil and gas operators in the form of the so-called 'unitisation' mechanism whereby the Secretary of State has powers to require the preparation of a unitised development scheme between oil and gas Licensees. Despite significant technical and commercial complexities, the unitisation process has, by necessity, been successfully implemented across the UK Continental Shelf.
- 5.7 A failure to address the wake loss issue appropriately will not only impact upon existing operational windfarms but will also create a climate of uncertainty and risk for future development.

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