

**DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)  
DEADLINE 4 SUBMISSION**

**DOGGER BANK OFFSHORE WIND FARM PROJECT 1 PROJCO LIMITED,  
DOGGER BANK OFFSHORE WIND FARM PROJECT 2 PROJCO LIMITED AND  
DOGGER BANK OFFSHORE WIND FARM PROJECT 3 PROJCO LIMITED**

**INTRODUCTION**

1. Dogger Bank Offshore Wind Farm Project 1 Projco Limited (**DBA Projco**) is a statutory undertaker for the purposes of the Planning Act 2008. DBA Projco has the benefit of development consent for the Dogger Bank A Offshore Wind Farm (**DBA**) which was granted pursuant to The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 as amended (the **DBA/DBB DCO**).
2. Dogger Bank Offshore Wind Farm Project 2 Projco Limited (**DBB Projco**) is a statutory undertaker for the purposes of the Planning Act 2008. DBB Projco has the benefit of development consent for the Dogger Bank B Offshore Wind Farm (**DBB**) which was granted pursuant to the DBA/DBB DCO.
3. Dogger Bank Offshore Wind Farm Project 3 Projco Limited (**DBC Projco**) is a statutory undertaker for the purposes of the Planning Act 2008. DBC Projco has the benefit of development consent for the Dogger Bank C Offshore Wind Farm (**DBC**) which was granted pursuant to The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 as amended (the **DBC DCO**).
4. DBA, DBB and DBC are due to commence commercial operation between 2025 and 2027 and so will be operational before construction of the Dogger Bank South (**DBS**) Projects commence.

DBA Projco, DBB Projco and DBC Projco (together the **Projcos**) are making this submission in respect of the Applicant's approach to wake loss in respect of DBA, DBB and DBC and the interaction with the DBA and DBB order limits. This submission builds off of the Projcos' relevant representation (RR-007); Deadline 1 submission (REP1-071); Deadline 2 Submission (REP2-071); and Deadline 3 Submission and Response to the Examining Authority's (**ExA**) First Written Questions (REP3-063). It also sets out the Projcos' position as stated at Issue Specific Hearing 3 (**ISH3**) held on 8 April 2025.

**IMPACT ON DBA, DBB AND DBS – THE PROJCOS' WAKE ASSESSMENT**

5. In The Awel y Môr Offshore Wind Farm Order 2023 (**Awel y Môr**) decision, the wake loss impacts on Rhyl Flats equated to a potential loss of up to 26,000 megawatt hours (MWh) as result of the Awel y Môr offshore wind farm (a circa 2% wake loss) for the remaining lifetime of Rhyl Flats (which did not overlap significantly with the proposed lifetime of Awel y Môr). This led to moderate weight against the grant of development consent, and at that level of impact the Secretary of State was satisfied by the need to impose a requirement to further mitigate those impacts.
6. At Deadline 3, the Projcos identified that a 2% impact on DBA alone would give rise to a potential loss of 116 GWh (116,000 MWh) per annum, or 4,050 GWh for the lifetime of DBA (using a capacity factor of 55%).
7. To date during the examination, the Applicant has refused to make available its withdrawn wake assessment. The Projcos understand that the Applicant will now lodge, on a 'without prejudice' basis, a submission at Deadline 4 setting out the results of their withdrawn wake assessment at a

high-level, taking into account the commercially confidential nature of the assessment. The Projcos welcome this late step and reserve their position to comment on the conclusions of this assessment in due course.

8. In the interim, the Projcos have modelled the expected reduction in energy produced by the DBA, DBB and DBC projects as a result of DBS. In carrying out this modelling, the Projcos have relied on their Energy Analytics (EA) team, which is comprised of wind energy analysts and wake modelling experts who are responsible for performing wind resource and energy yield assessments. Their track record covers offshore wind projects developed by the Projco shareholders, with previous experience working for independent consultancies, turbine manufacturers, and in research and development of wake modelling.
9. The assessment is based on the EA team's prediction of the long-term available wind resource and the TurbOPark model, which is an engineering wake model developed by Ørsted and available to the public since 2022. TurbOPark is available in a number of commercial wake modelling software packages. It is considered appropriate for an assessment of wake effect as a result of DBS as, unlike many alternative engineering wake models currently available, TurbOPark has been explicitly developed and tuned on measurement data to predict farm-to-farm wake losses.
10. The assessment concludes that the wakes produced by DBS would reduce the net energy output of DBA, DBB and DBC as follows:

	<b>DBA</b>	<b>DBB</b>	<b>DBC</b>
Estimated Wake Loss	-4.1%	-1.6%	-0.6%

11. It is difficult to forecast what the financial impact of these wake losses would be on the Projcos, as this may vary in future due to the actual capacity factor and the strike price for electricity at the time (noting that this may increase due to inflation or other economic factors). However, it is important to view these estimated reductions in 'real terms', particularly as NPS EN-3 (para. 2.8.345) provides that it is not just disruption that should be avoided or minimised, but also economic loss.
12. Indicatively, the Projcos' estimate the annual impact of wake loss from DBS to be £20m and £582m for the total period of concurrent operations, using the Projcos' CfD Strike Prices in 2025 price terms to calculate the impact. There is a significant economic loss to the Projcos which DBS has not sought to mitigate or compensate.
13. Annually, based on a capacity factor of 55%, there would be a total energy loss of 364 GWh at DBA, DBB and DBC from DBS. Given the temporal overlap between DBS and each of DBA, DBB and DBC, it is estimated that the total energy loss would be 10,698 GWh. This is over 400 times higher than the potential losses on Rhyl Flats from Awel y Môr (which were estimated to be 26 GWh and afforded "moderate weight" by the Secretary of State in that decision). The impacts on DBA, DBB and DBC are several orders of magnitude greater than those on Rhyl Flats and should therefore be given significant weight in the planning balance.

#### **POLICY POSITION**

14. The position on The Awel y Môr Offshore Wind Farm Order 2023 (**Awel y Môr**), and its status as precedent, has been set out in each party's submissions to date.

15. If the Applicant's position is correct, then this need not be considered any further by the ExA. If, however, the Projcos' position (and that of the Ørsted IPs) is correct then:
  - (a) the position is that the policy in EN-3 applies, and it applies in its totality and so requires a wake assessment under NPS EN-3 2.8.197 (which the Applicant has not submitted) and for the Secretary of State to apply all of the decision-making policies in NPS EN-3 2.8.342 to NPS EN-3 2.8.348; but
  - (b) the Applicant's position appears to be that the Secretary of State then adopts a pragmatic approach under NPS EN-3 2.8.342, disregards the decision in *Awel y Môr* and disregards the rest of the policy which the Applicant argues does not apply.
16. NPS EN-3 sets out what has to happen if NPS EN-3 2.8.342 is engaged and does apply:
  - (a) NPS EN-3 2.8.344 provides that the Secretary of State "*should expect the applicant to work with the impacted sector to minimise negative impacts and reduce risks to as low as reasonably practicable*". The Applicant has, by its own admission, not done this.
  - (b) NPS EN-3 2.8.345 very clearly follows on from NPS EN-3 2.8.344. It starts with the words "*as such*" which clearly link the two paragraphs and can have no other meaning, and so once the Secretary of State is satisfied that NPS 2.8.344 applies it is clear that the remainder of this section of NPS EN-3 applies. NPS EN-3 2.8.345 provides that that: "*As such, the Secretary of State should be satisfied that the site selection and site design of a proposed offshore wind farm and offshore transmission has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety other offshore industries*". The Secretary of State cannot be so satisfied in this case, because the Applicant has confirmed at Deadline 3 (and reiterated at ISH3) that it has not considered wake in site design, has not sought to avoid or minimise disruption or economic loss and has not engaged with relevant parties.
  - (c) NPS EN-3 2.8.345 also makes clear that avoiding or minimising both disruption and economic loss is an expectation. The Applicant has not satisfied this.
  - (d) NPS EN-3 2.8.348 draws this altogether and states as follows: "*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*" (emphasis added). This is based on a proviso that the scheme has been carefully designed, that consultation has been undertaken and that mitigation measures may be possible to reduce effects.
    - (i) Taking each in turn. First, careful design:
      - (A) In response to IOU.1.6 and IOU.1.7, the Applicant has confirmed that it has not considered wake losses through careful design.
    - (ii) Second, consultation with relevant stakeholders:
      - (A) In response to IOU.1.7, the Applicant has confirmed that it has "*not worked with the operators of other wind farms to seek to reduce wake effects*".
    - (iii) Third, mitigation:

- (A) In response to IOU.1.6, the Applicant has confirmed that it has not considered siting or design:

*“Furthermore, any modification which would have a material effect on an existing wind farm would require such a large decrease in generation at the farm under design as to be completely disproportionate. Only marginal differences in impact can be achieved and even then at significant cost to the new farm. Such design modifications have been considered by Mona”.*

*“The Applicants do not consider there are any **acceptable** design solutions which would resolve the concerns regarding wake loss or mitigate for any potential impacts”.*

*“mitigation attempts end with lower total energy production, either via increased internal wake losses, or via reductions in installed capacity”.*

- (B) This demonstrates that: 1) there are design and mitigation measures that can be considered; 2) that this can lead to marginal differences and a reduction in impact; and 3) other promoters have undertaken this exercise in their DCO applications.
- (C) The work in respect of Mona does not assist this examination, because it is not a site-specific assessment of the interaction with DBA, DBB and DBC.
- (D) The qualification of “*acceptable design*” in the Applicant’s response is important here, particularly given the level of impact likely to DBA, DBB and DBC. If the impacts of the design solutions (which it appears the Applicant’s acknowledge that there are) is to reduce annual energy production (AEP) at DBS but to lessen the AEP impact on DBA, DBB and DBC, then that needs to be understood.
- (E) Paragraph 2.8.345 of EN-3 puts “*economic loss*” on equal footing with disruption and adverse effects on safety. Where economic loss may occur and cannot be demonstrably removed or reduced via design mitigation, then economic compensation can and should reasonably be considered as a form of mitigation.

- (iv) The Projcos recognise the verbal evidence provided at ISH3 and understand that further written evidence will be submitted to this examination in the form of a technical note which may address these matters. The Projcos welcome this.

17. It is imperative that wake effects remain an issue to be resolved in the planning process as there is no other legally secure route to settle ongoing disputes in an appropriate timeframe and the Applicant has not engaged with the Projcos to resolve the Projcos’ concerns.

***Maximising Energy and Mitigation Hierarchy***

18. At ISH3 and in its Deadline 3 submissions, the Applicant has consistently referred to maximising AEP as its design objective in order to achieve policy objectives of maximising such production. This is a policy objective, but it is always subject to compliance with planning policy and the NPSs do not provide for maximising energy production at all costs.

19. The Project is a project which benefits from critical national priority status. The glossary to EN-3 defines critical national priority as: “A policy set out at Section 4.2 of EN-1 which applies a policy presumption that, subject to any legal requirements (including under section 104 of the Planning Act 2008), the urgent need for CNP Infrastructure to achieve our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy”.
20. There is currently no written evidence before this examination that the Applicant considered or applied the mitigation hierarchy in respect of wake loss matters applicable to this Project and its impacts on DBA, DBB or DBC at the design stage or prior to examination.
21. To the extent that there remain impacts, these must be mitigated. These are capable of mitigation, but given the approach to the application (and absent the emergence of measures raised in ISH3 that may emerge before construction to allow such mitigation) the most appropriate like-for-like mitigation for this issue is compensation.

#### ***Precedent and Emerging Policy***

22. As previously reiterated, The Clean Power 2030 Action Plan<sup>1</sup> sets out the Government’s current view on wake loss. Its position is clear that Awel y Môr is a precedent:  
*“Historically, this has been resolved outside the planning system, but a precedent was set with a wake condition in the 2023 Awel y Mor Development Consent Order...”* (emphasis added, pg. 84)
23. In terms of emerging policy, there is no quick fix to the issue. The Clean Power 2030 Action Plan sets out what is to be achieved and notes that the Government is “*looking for comparison mitigations*”. It identifies the need to build an evidence base to inform any broader resolution. Our position is that, whilst this may emerge, it has not yet emerged and will clearly require engagement with industry and consultation. As such, no weight can be attached to speculative policy change.
24. Relatedly, it is noted that Government issued new versions of the NPSs for consultation on 24 April 2025, including an updated version of EN-3 that specifically draws out the need for applicants to carry out wake loss assessments and to make reasonable efforts to demonstrate that they have considered how to manage the impact of wake effects on other occupiers. The draft EN-3 provides, for decision making, that an applicant must demonstrate “that they have made an assessment of inter-array wake, taken all reasonable steps to minimise as far as possible the impact of wake effects and shown that they have made reasonable efforts to work collaboratively with those who may potentially be impacted”.
25. In this case, the Applicant:
  - (a) has not demonstrated that it has made an assessment of inter-array wake;
  - (b) has not demonstrated that it has taken all reasonable steps to minimise as far as possible the impact of wake effects; and
  - (c) has not shown that it has made reasonable efforts to work collaboratively with those who may potentially be impacted.
26. In short, it is clear that the NPSs apply, and that Government recognises this as an issue in the Action Plan and that it is a planning issue appropriately dealt with as part of this examination.

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<sup>1</sup> <https://assets.publishing.service.gov.uk/media/677bc80399c93b7286a396d6/clean-power-2030-action-plan-main-report.pdf>

## SIGNIFICANCE IN EIA TERMS

27. The Applicant scoped in operational impacts on offshore wind infrastructure as part of its scoping opinion. The position of the Applicant taken throughout examination is that, in effect, operational impacts on offshore wind infrastructure should be read as actually meaning “*operational impacts (other than wake loss impacts) on offshore wind infrastructure*”.
28. Section 16.1.1.1 (para. 67) of Chapter 16 of the Environmental Statement (APP-130, superseded by the subsequent submission, REP1-011) identified that: “*interference of the Projects with other wind farms could arise from the following: Wake losses for nearby wind farms resulting from the presence of wind turbines for the Projects*”. The examination is now asked to ignore this, but it cannot be ignored given the scoping opinion and the interpretation of the scoping opinion. The Projcos have set their position out on this in previous submissions (REP2-071 at paras. 24 and 25).
29. The Applicant’s ES sets out its methodology on assessment in Chapter 6 (APP-076) and Chapter 16. Taking the key elements of this methodology and applying this to the wake loss impact of the Project:
- (a) The sensitivity of offshore wind farms to interference is identified as high (para. 77 of Chapter 16).
  - (b) Table 6-8 of the ES identifies that a low adverse magnitude on a high value receptor gives rise to a moderate effect.
  - (c) Table 6-8 of the ES identifies that a medium adverse magnitude on a high value receptor gives rise to a major effect.
  - (d) The ES identifies at Chapter 6 (para. 62) that: “*Potential effects identified within the ES as major or moderate are regarded ‘significant’ in EIA terms*”.
  - (e) For the purposes of Chapter 16, the ES identifies low magnitude changes as: “*Some measurable change in resource attributes, quality or vulnerability, minor loss, or alteration to, one (maybe more) key characteristics, features or elements. For example, accidental damage to an asset resulting in short term reduction of functionality but not complete loss of function. Short term disruption to access to an asset*”.
  - (f) For the purposes of Chapter 16, the ES identifies medium magnitude changes as: “*Loss of resource, but not adversely affecting the integrity of resource; partial loss of/ damage to key characteristics, features or elements. For example, damage to an asset that results in either short term, complete inoperability or long term reduced functionality. Partial loss of access to an economically important asset, or short term complete loss of access.*”
  - (g) For the purposes of Chapter 16, the ES identifies a negligible magnitude change as: “*Very minor loss or detrimental alteration to one or more characteristics, features or elements, and / or slight alteration to a receptor*”.
  - (h) The ES identifies at Chapter 16 that: “*For the purposes of this assessment, any effect that is of major or moderate significance is considered to be significant in EIA terms*”.
30. Applying the Applicant’s own methodology, DBA, DBB and DBC are all high value receptors, as they are offshore wind farms with a high sensitivity to interference.
31. Applying the Applicant’s own methodology, there will be a measurable change, loss or alteration to one key characteristic of each of DBA, DBB and DBC which is the ability to generate clean

energy and the consequent output. This will also result in the long term reduced functionality of DBA, DBB and DBC throughout their predicted operational lifetime. This will not occur over a short term, but neither will it be a complete loss of function.

32. At the very least, based on the Applicant's own methodology set out in its ES, this is a low magnitude change. More likely given the scale of impact identified, it is a medium magnitude change based on their methodology. However, this cannot be said to be a negligible magnitude change as the impact cannot be characterised as a very minor loss or a slight alteration. The Projcos' position is that the impacts to DBA, DBB and DBC constitute at minimum a medium magnitude change as there will be loss of resource that results in long term reduced functionality.
33. If there is a low magnitude change to a high value receptor, then applying the methodology this gives rise to a moderate adverse effect. If there is a medium magnitude change to a high value receptor, then applying the methodology this gives rise to a major adverse effect. Either of these adverse effects will be significant in EIA terms. However, neither of these adverse effects have been assessed by the Applicant following its amendment to the ES.
34. Applying the methodology, we submit that the impact is major adverse and is significant.

#### **APPROACH TO REQUIREMENTS AND PROTECTIVE PROVISIONS**

35. We have set out in previous submissions the reason why dealing with this matter through a requirement to the DCO is appropriate. The same principle applies to protective provisions, which the Projcos consider to be preferable to a requirement (as protective provisions are more commonly used to resolve matters directly between an undertaker and an affected third party).
36. In terms of requirements, NPS EN-1 4.1.16 provides that: "*The Secretary of State should only impose requirements in relation to a development consent that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects*". In this case (and applying this test to protective provisions which are not strictly subject to this policy) the Projcos' position on each of the six tests is set out below:
- (a) **Necessary.** The Projcos' position is that a protective provision would be necessary given the significant adverse impact (in EIA and planning terms) that would be caused to DBA, DBB and DBC throughout their operational lifetime and given that DBA, DBB and DBC themselves are significant projects consented through a DCO. Lesser impacts on previous projects have been subject to such a protective provision (or requirement);
  - (b) **Relevant to planning.** The Projcos' position is that this is relevant to planning, as wake loss is subject to the NPS policies, is identified as a key issue in the Clean Power 2030 Action Plan and is relevant in EIA terms. The Projcos' position follows the mitigation hierarchy;
  - (c) **Relevant to the development to be consented.** The Projcos' position is that this is relevant to the development to be consented, as the Project causes the impacts, and the Applicant has (in part) acknowledged a need to assess the wake loss impacts (at least in terms of its position on greenhouse gas emissions in its ES);
  - (d) **Enforceable.** The Projcos' position is that this would be enforceable, as it would provide a mechanism for future mitigation (which may come forward in the period between now and construction, as recognised by the Applicant at ISH3, noting that this is based on a worst-case scenario) including compensation. The provision is in similar terms to other protective provisions that are included in the draft DCO.

- (e) **Precise.** The Projcos' position is that the mechanism is precise. It is no less precise than other compensation measures secured in Schedule 15 of the draft DCO.
  - (f) **Reasonable in all other aspects.** The Projcos' position is that this is reasonable in all other aspects, particularly given the Applicant's refusal to engage with the Projcos or to effectively engage with this matter in the examination of this Application in spite of this issue being raised consistently by the Projcos at the pre-application stage.
37. We have set out the reason why protective provisions (or a requirement) is necessary in more detail at Deadline 3 (REP3-063 at IOU.1.12) and why the balance falls with the Projcos and their projects.
  38. At ISH3, the Applicant's position was developed to identify that it was complex to assess and mitigate multiple projects and that this was a further reason why design mitigation is not appropriate. The complexity of this issue has been known for some time, and the failure to assess a complex situation is not a justifiable reason for not securing mitigation.
  39. The Applicant's Deadline 3 submissions confirmed that design solutions and mitigation measures have not been considered and that the focus has been on maximising energy production. The Applicant developed this position at ISH3 by reference to work it has undertaken in a different context (which was not previously before this examination), but which could be extrapolated and applied. The Applicant also referred to potential measures which could provide potential mitigation at ISH3, such as a reduction in turbine height and identified emerging technologies. We note that the ExA requested information on these measures at ISH3, and we reserve our position to comment when written evidence on such measures is introduced to the examination as these may be relevant to a requirement or protective provisions.
  40. If commercial agreements securing wake loss mitigation/compensation for impacted projects cannot be secured prior to the end this examination, which we consider to be likely given the lack of engagement, the DCO planning process must be used. In those circumstances, a provision for the Applicant to mitigate or compensate any wake effects should be included in the DCO. Where design and mitigation measures have not specifically been considered in the design of this Project, the only mitigation that is likely to be available is financial compensation.
  41. In such circumstances, a DCO can include compensation and can also include arbitration provisions to consent conditions. This will protect the interests of both impacted and impacting projects by ensuring that consent conditions are discharged within a fair and timely framework.
  42. Section 120(3) of the Planning Act 2008 provides that a DCO may make provision relating to, or to matters ancillary to, the development for which consent is granted
  43. Section 120(4) of the Planning Act 2008 provides that the provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.
  44. Part 1 of Schedule 5 to the Planning Act 2008 identifies the following matters:
    - (a) Para 35 of Schedule 5 to the Planning Act 2008 specifies that the "*payment of contributions*" is a matter which can be secured.
    - (b) Para 36 of Schedule 5 to the Planning Act 2008 specifies that the "*payment of compensation*" is a matter which can be secured.



- (c) Para 11 of Schedule 5 to the Planning Act 2008 specifies that the “*imposition or exclusion of obligations or liability in respect of acts or omissions*” is a matter which can be secured.
  - (d) Para 11 of Schedule 5 to the Planning Act 2008 specifies that the “*protection of the property or interests of any person*” is a matter which can be secured.
45. This demonstrates that as a matter of law, the DCO can include provisions of the nature sought by the Projcos. There is no basis for arguing as a point of law or principle that the DCO cannot include a financial provision and cannot include the protection of DBA, DBB or DBC.
46. It is standard practice for DCOs to include compensation provisions in respect of the protection of assets.
47. Indeed, the DBS DCO currently includes protective provisions in favour of the Environment Agency (at Part 3) and Network Rail Infrastructure Limited (at Part 5) which contain unlimited indemnities in favour of those entities.
48. In respect of the protective provisions in favour of Network Rail Infrastructure Limited included in the draft DCO, it is important to note that:
- (a) Para 14(1) provides that: “*The undertaker must pay to Network Rail all reasonable and properly incurred costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject always to the remaining provisions of this paragraph and to article 51 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail by reason of the construction, maintenance or operation of a specified work or the failure thereof*”
  - (b) Para 14(3) provides that: “*The sums payable by the undertaker under sub-paragraph (1) must if relevant include a sum equivalent to the relevant costs*”.
  - (c) Para 14(4) and 14(5) make it clear that this also extends to train operators, and that train operators can enforce this against the Applicant.
  - (d) Para 14(6) provides that: “*“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) properly and reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a direct result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1);*”
49. Therefore, the Applicant has committed to compensate Network Rail Infrastructure Limited for any costs that it or any train operator incurs as a consequence of the construction or operation of the Project. That expressly includes **any** loss of revenue that Network Rail Infrastructure Limited or its train operators incur as a consequence of **any** restriction of the use of the railway network as a consequence of the construction of the Project.
50. The circumstances in which this mitigation measure is provided are different to the current circumstance, but fundamentally that amounts to an open-ended commitment to Network Rail in respect of any (not limited to any significant, but any) loss of revenue as a consequence of the construction or operation of the Project. This is the Applicant’s drafting.
51. A similar provision is given to the Environment Agency in the form of an open-ended indemnity.

52. It is important to remember that DBA, DBB and DBC are themselves nationally significant infrastructure projects, granted pursuant to DCOs, which contribute to the production of clean energy. The Projcos are statutory undertakers, just as with Network Rail Infrastructure Limited, whose assets and interests require protection.
53. In the context of protective provisions more generally, the Secretary of State has determined in numerous cases that imposing a financial cap on any such indemnity is not appropriate (see recently The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 S.I. 2024/393 (“**Yorkshire Green**”) and The North Lincolnshire Green Energy Park Order 2025 S.I. 2025/000 (“**North Lincolnshire**”). In Yorkshire Green and North Lincolnshire, it is clear that the Secretary of State’s position has been that the protection of statutory undertaker’s assets is paramount and that any restriction on financial compensation is for an applicant to justify. That would require consideration and assessment of the matter by an applicant.
54. It is important that the provision is subject to security, secured through the DCO.
55. The argument that a measure such as that sought by the Projcos has not been included in a DCO before in respect of wake loss is insufficient, and there can be no argument that this is not permissible pursuant to the Planning Act 2008. There has not been a project which has had such a significant effect in terms of wake losses on other nationally significant infrastructure projects which will deliver the same benefits, outside of an extension project where both projects are ordinarily controlled by the same underlying entity.
56. The Clean Power 2030 Action Plan recognises the precedent of Awel y Mor, recognises that this is an increasingly important issue and identifies that the Government is looking for comparative mitigations. The form of protective provisions provided to Network Rail is a comparative mitigation. The impact on DBA, DBB and DBC is significant, this has not been considered in the design of the Project or otherwise compensated, and the Applicant has not complied with the various policy requirements. As such, mitigation must be secured to enable consent to be granted.
57. It would be perverse, absent strong evidence from the Applicant, for a decision not to impose protective provisions given that the Secretary of State has: 1) found such provision necessary, having applied moderate adverse weight in planning terms, at Awel y Mor when the impact on that project was far less than the impact on the current project; 2) in light of the recognition of that precedent in Clean Power 2030 Action Plan and the recognition of this as a material issue in the industry; and 3) given the significant adverse impacts identified.

#### **RESPONSE TO ACTION POINTS ARISING FROM ISH3 ON 8 APRIL 2025**

58. **Action Point 15:** Provide an explanation as to how the 55% generating capacity factor was determined as appropriate and what this was based on.
59. **Projcos’ Response:** The 55% capacity factor is based on the Projcos’ own assessment of wind resource and standard losses including availability, electrical losses, etc. Wake effects from DBA, DBB, DBC and the neighbouring Sofia project are accounted for in this figure. However, wake effects from DBS East and DBS West are not considered as these proposed developments were announced after this calculation was performed and a final investment decision had been taken for the Dogger Bank projects.
60. **Action Point 16:** Clarify which of the array areas ie Dogger Bank South East, Dogger Bank South West or both is of most concern regarding wake effects and why it is of concern?

61. Projcos' Response: The Projcos consider that both array areas (i.e. both DBS East and DBS West) will impact DBA, DBB and DBC due to their proximities. Individually, DBS West may have a slightly larger impact as it is closer than DBS East and is also located upstream of the prevailing wind direction relative to DBA.
62. **Action Point 17**: Confirm whether wake loss from the Hornsea Offshore Wind Farms already affects Dogger Bank A, B and C offshore wind farms.
63. Projcos' Response: The Projcos would note that the Hornsea Offshore Wind Farms were progressed as part of the same Crown Estate leasing round (Round 3) as DBA, DBB and DBC (and the Sofia project) and were consented within broadly similar timescales. As a result, the Projcos have been aware of the Hornsea projects from a very early stage of project development, such that these projects were capable of being factored into the development of DBA, DBB and DBC and were taken account of in economic assumptions, including financial investment decisions (FID).
64. **Action Point 20**: Provide a view on wind sector management as a form of mitigation for wake loss effects and how this could be captured by the draft DCO.
65. Projcos' Response: Wind sector management is a strategy of curtailing wind turbines in a wind farm to reduce the wakes and structural loading on neighbouring turbines. However, the Projcos do not consider that this would be a constructive long-term mitigation measure for wake loss effects, as the consequential reduction in energy production at DBS would likely significantly exceed the impact it would have on DBA, DBB and DBC (i.e. it would not cause a like-for-like reduction in production at DBS as an increase/resolution in production at DBA, DBB and DBC).
66. **Action Point 24**: Submit any proposed draft protective provisions, draft wording for a requirement, or how a separate private agreement would mitigate any effects from potential wake loss with an explanation on how these would meet any relevant statutory tests and how they would address potential effects.
67. Projcos' Response: In light of the publication of updated consultation drafts of the NPSs on 24 April 2025 and given the commitment by the Applicant to submit into examination the results of its wake assessment (at least at a high level), the Projcos have not submitted draft protective provisions at this Deadline. The Projcos would welcome engagement from the Applicant on drafting these with a view towards submitting agreed drafting (insofar as possible, with remaining points not agreed marked as such) at Deadline 5. Notwithstanding this, an explanation as to how protective provisions would address potential effects and meet the relevant statutory tests is set out in detail in paragraphs 35 to 57 above.
68. **Action Point 25**: Set out the significance of effects from wake loss on Dogger Banks A, B or C with reference to Tables 16-6, 16-7 and 16-8 of ES Chapter 16 [REP1-011].
69. Projcos' Response: This is set out in detail in paragraphs 29 to 34 above.

**CMS CAMERON MCKENNA NABARRO OLSWANG LLP**

**25 APRIL 2025**