



Planning Inspectorate
Arolygiaeth Gynllunio

Hearing Transcript

Project:	EN010125 - Dogger Bank South
Hearing:	Issue Specific Hearing 6 – Part 1
Date:	05 June 2025

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Dogger Bank ISH6 – Pt1

00:00:05:10 - 00:00:32:00

Good morning everybody. Time is now just up to 930. And I'd like to welcome you all to this issue specific hearing in relation to the application made by R.W. renewables UK Limited at Dogger Bank Southwest Limited and RWA renewables UK. Dogger Bank Southeast Limited for the proposed Dogger Bank South offshore wind farms. Just before I proceed any further, can I just check you can all hear and see me. If not, if you can just raise your hand.

00:00:34:14 - 00:00:43:23

Excellent. I'm not seeing any hands up. So I'm assuming all the technology is working, which is always really good. And can I just confirm with Mrs. Hartwell that the live stream and the recording, this event has commenced?

00:00:44:17 - 00:00:45:22

They have Mr. Hunter.

00:00:46:03 - 00:00:58:23

Brilliant. Thank you very much for that. And just a quick reminder. Uh, can I just ask all participants that they are muted unless they're invited to speak? And please ensure that all electronic devices are on silent.

00:01:00:12 - 00:01:21:12

My name is agent Hunter and I'm an examiner, an inspector, and a charter town planner. I'm employed by the Planning Inspectorate, and I've been appointed by the Secretary of State to be the lead member of a panel of inspectors to examine this application. Just before I run through some details on the management of today's events. I'm just going to ask my colleagues if they could just introduce themselves, please.

00:01:23:10 - 00:01:28:15

Hello. Good morning. My name is Helena Abramsky. I'm an examining inspector and a chartered town planner.

00:01:31:06 - 00:01:37:19

Good morning. My name is Matt Sandy. I'm an examining inspector, chartered water environmental manager, and a civil engineer.

00:01:40:03 - 00:02:16:24

Excellent. Thank you both. Together with Laura Sean and Claire Beeler, we are the examining authority or the Exa for this application. We have spoken to Mrs. Hartwell, who is the case manager in the adjoining conference. I'd also like to mention Mr. Burney, who is our case manager for this project. Act together, they are the case team. They're also colleagues in the Planning Inspectorate with us today, and technicians from CVS who are attending solely for the purpose of managing the recording and the live stream of the hearing. If you have any questions regarding the application process in general, could I ask that you please email the case team, who I'm sure would be happy to help.

00:02:17:26 - 00:02:54:18

I can also confirm that all members of the examining authority have made a formal declaration of interests, and there are no known conflicts of interest with regards to us examining this application. Just at this point, I'd just like to point out that I'm well aware that Mr. Colin McAllister is part of the applications team. And just for the record, Mr. McAllister and I worked together in the same environmental consultancy for a number of years since I left in 2011. So as part of the consideration of any potential conflicts, I am satisfied that this past working relationship does not represent a conflict of interest and therefore does not affect my ability to undertake and fulfil my role as part of the Xa.

00:02:57:18 - 00:03:29:23

Just turning now to the management of today's hearings. And just to go through a few housekeeping and introductory matters, if I could. The meeting is being held on the Microsoft Teams platform and is being live streamed. Participants should not use the chat function as it is not being monitored today. Should you wish to make a comment, please switch your camera on and use the Microsoft Team Hands Up function and wait to be invited to speak. If you are participating in the meeting, it is important that you understand that you will be recorded and live streamed and that the digital recording will be published.

00:03:30:05 - 00:04:02:18

If you do not want your image recorded, by all means please switch off your camera. The planning inspector's practice is to retain recordings for five years, from the Secretary of State's decision on the Development Consent Order, to avoid the need to edit the recordings. We would ask that you try your best not to add information to the public record that you wish to be kept private and confidential. If you feel that such information is necessary, please provide it in a written document so that it can be redacted before publication. If at any point in the meeting you can't hear us or wish to speak.

00:04:02:20 - 00:04:37:17

Can I ask that you turn your camera on if it is turned off, and use the raise hand functions in teams so that we can acknowledge this, but there may be some times before, some some time before we come to you. Depending on the discussion, the information contained within your joining instruction includes what to do if you lose your connection. If needed, we are able to adjourn for a short period if there are more significant problems. If this happens, I would suggest that you contact the case team in this instance to make them aware. If any member of the EXR loses connection. Then we will probably take a short break just to allow them to reconnect before recommencing the hearing.

00:04:39:17 - 00:05:10:19

We'll adjourn for a short break at a convenient point, usually no more than every hour and a half. If for medical or other reasons you require a break at a specific time, then please do let the case team know and we can hopefully adjust the program to meet your needs. Our intention is to have a short break. Mid-morning about 11. Breaking for lunch around 1:00 ish. And then, if required, we'll have a mid-afternoon break as well. When we do have a break, the ex will leave the meeting completely so we cannot hear or see anything. If you wish, you are able to stay in the virtual meeting room.

00:05:10:21 - 00:05:44:11

However, just as a note, please do not discuss any detailed matters with each other during this time as you'll remain audible and visible to all participants. Unless you turned your microphones off and turned your cameras off as well. But the purpose of identification, and for the benefit of those who may listen to the digital recording later, could I just ask that every point in which you speak, please give your name. And if you are representing an organization or an individual who it is that you represent. Just before I move on to some further comments about the purpose of today's hearing. Does anyone have any questions or comments about the technology or just that general management that I've outlined?

00:05:48:09 - 00:06:23:07

Okay. I'm not seeing any hands up. So I'll move on to purpose of today's hearing. Rule 14 two of the examination procedure rules requires that at the start of the hearing, the examination authority shall identify matters to be considered at the hearing. These are listed in the agenda for today's hearing, which is placed on the inspector's website on the 28th of May, 2025 and can be found at the examination library, which is EV 11 001. Please note that today's agenda is for guidance only, and we may add other issues up and considerations as we progress through.

00:06:24:01 - 00:06:51:27

I would also like to reassure you that we are familiar with the documents that you have sent in. So when answering a question, you do not need to repeat at length something that has already been submitted. If you do want to refer to information already submitted, it would be really helpful to us if you could give us the examination library reference number when you do. This is a public examination and if there is a point that you wish to make, please feel free to raise your hand and switch on your camera. But please do wait to be invited to speak before you do make your comments.

00:06:53:18 - 00:07:24:00

I would also remind everybody that this is not an inquiry and therefore, unless the examination, unless the examination authority have specifically requested it, there will be no formal presentation of cases or cross-examination at at such. So as such, any questions you may have for parties need to be asked through the examining authority. I think we've made the applicant aware that this may well be something we might do slightly differently when we come to the weight class, and I think the parties are aware of that, that we might be running slightly different to a round table type discussion at that point.

00:07:25:09 - 00:07:56:11

And finally, it's important that we get the right answers to the questions that the examination are going to ask. At this stage, it's just worth reiterating that the examinations are predominantly written process. Therefore, if you cannot answer the questions that are being asked or require time to get the information requested, then rather than giving a restricted or potentially incorrect answer, please indicate that you need to respond in writing. We can then defer the response to an action point to be submitted at deadline six, which is the 13th of June, or to a written question if needs be.

00:07:57:18 - 00:08:06:18

Just before moving on to introducing everybody who wants to participate today. Can I just check if anybody's got any questions or comments on those procedural matters that I've just outlined?

00:08:13:21 - 00:08:15:24

Not seeing any hands up.

00:08:18:12 - 00:08:53:00

Okay. If I can now just sort of go through introductions to people who are looking to participate today. So the case team we're providing with a list of those interested persons and interested parties who expressed a wish to be heard today. And those persons I've got listed are the applicants and their representatives at East Riding of Yorkshire and Hull City Council, Representatives of the Dogger Bank project. Representative of the Orsted IP's Representatives of JL white and sons from Book Farm and the representatives of East Yorkshire Concrete Limited, including Mr.

00:08:53:02 - 00:09:03:12

Mark Newburn and Mr. James Milburn. Just before I ask those parties to introduce themselves, is there anybody else on the call who is expecting to speak who I haven't mentioned?

00:09:08:27 - 00:09:26:26

Now? Excellent. I'm not seeing any hands up. And so I'm now just going to go through that, that list. When I say your organisation's name, please can you switch on your camera and microphone and introduce yourself and just identify how you would like to be referred to and who it is you represent? So if I could start with the applicant please.

00:09:29:01 - 00:09:32:06

Good morning sir. My name is Mr. Julian Boswell.

00:09:34:16 - 00:09:48:00

I'm a solicitor and partner with Burgess Salmon LLP, and we represent the applicants. Um, I will ask the people sitting at the table next to me to introduce themselves and starting at the far left.

00:09:49:19 - 00:09:54:10

Hello, Thomas Tremlett for the applicant and the senior manager for Dogger Bank South.

00:09:55:28 - 00:10:10:18

Good morning. I'm Andrew Leadbetter. I'm engineering manager for the applicant myself. Good morning. My name is Justin Burstein and I am the lead expert for, uh, offshore wind assessment for.

00:10:12:07 - 00:10:15:14

Um, Jen Ashwell. I'm a legal director by design and acting.

00:10:19:22 - 00:10:28:26

Thank you for that. Good morning. All. Um, if I could now move on to the representatives from East Riding of Yorkshire Council and Hull City Council, please.

00:10:33:04 - 00:10:57:17

Good morning. Graham Varley, representing East Riding of Yorkshire Council. Um, I'm a the case planning officer who's been working on this scheme with the applicants. We also have James Goodyear and Victoria Byrnes, representing both East Riding of Yorkshire Council, and they both also

represent the Humber Archaeology Partnership, which is an organisation which covers both the East Riding of Yorkshire Council and Hull City Council.

00:10:58:23 - 00:10:59:29

Thank you very much.

00:11:03:00 - 00:11:05:23

Is there anybody from Hull City Council on the line?

00:11:11:12 - 00:11:21:11

Okay. That's fine. If they join us, we'll we'll find out. If you could let us know, that'd be great. If I could then move on to the representatives of Dogger Bank project, please.

00:11:23:19 - 00:11:52:18

Good morning sir. My name is Robert Garden, and I'm with a partner and solicitor at CMS and representing the three Dogger Bank projects who promote the Dogger Bank A, Dogger Bank B and Dogger Bank C offshore wind farms. And we refer to those as the project today. And I'm joined by Elliott, who will introduce himself. Good morning all. My name is Elliott Lindsay. I'm a modelling expert for SSE renewables. Uh, also speaking on behalf of the project IPPs today.

00:11:56:23 - 00:12:02:26

Thank you very much. Good morning. Both. Um, and then if I could then move on to representatives for the Orsted IPPs.

00:12:05:26 - 00:12:13:08

You. Good morning sir. Good morning everyone. My name is Alex Dresden. I am an associate at Pinsent Masons LLP acting for the Orsted IPPs.

00:12:17:08 - 00:12:25:06

Good morning, Mr. President. Thank you very much. Um, and then if I could move on to the representatives of, uh, jail white and sons, please.

00:12:29:20 - 00:12:37:02

Uh, thank you sir. Uh, my name is Tom Julien from rural. I'm a chartered surveyor representing JL Whiting Sons.

00:12:38:24 - 00:12:49:09

Brilliant. Thank you, Mr. Julian. Just while I've got you. Just. Can I just because I think your notification came in quite late. Mr. Julian, can I just clarify what items you wanted to speak on? Just so we've got that against our our agendas.

00:12:50:19 - 00:12:55:17

The loss of agricultural land, I think, is the point that I want to be involved on.

00:12:56:22 - 00:13:05:11

Okay. So that's item, uh, 4.1.2. Brilliant. Okay. That's great. Thank you very much. Yeah. We got to know that. That's great.

00:13:05:13 - 00:13:05:28

Thank you.

00:13:06:27 - 00:13:16:05

And then finally, the representatives of each each East Yorkshire Concrete Limited and, uh, Mark Newburn and James Newburn, please.

00:13:18:07 - 00:13:29:27

Good morning sir. My name is Oliver Stones. I'm a partner of um AFP consultants, representing um Messrs. Milburn and East Yorkshire Concrete Products Limited. Thank you.

00:13:30:09 - 00:13:37:29

Thank you. And again, Mr. Stones, just so I got you because your request came in quite late. Can I just clarify, just so that we know what item you want to speak on that be helpful to us.

00:13:38:09 - 00:13:42:11

Items 4.11 and 4.12.

00:13:42:27 - 00:13:44:26

Brilliant. That's great. Thank you very much.

00:13:56:20 - 00:14:05:27

Okay, just to chat before I sort of move on, is anybody else who's expecting to participate in the hearing? Who would like to introduce themselves? Who I've not identified.

00:14:10:14 - 00:14:22:28

Now. Okay. I'm not seeing any hands up. So I think we've done that. That's brilliant. Okay. Well that that brings to the end item one. So thank you for that. And I'm now going to pass it over to Mr. Ski who has outlined earlier. We'll start with item two on the agenda which is weight loss.

00:14:25:00 - 00:14:55:10

Thank you Mr. Hunter. Uh, a lot of information was submitted at deadline five in relation to weight loss, including weight loss assessments from the applicants and project IPS. We are yet to have comments from the interested parties on those deadline. Five documents. Given the timing of the hearing, in order to focus today's discussions in a meaningful way. I intend to impart concentrate on published MPs in three policy requirements, as this will frame the examining authorities reporting on the matter.

00:14:56:10 - 00:15:38:01

I do now want to give interested parties, including the applicants, an opportunity to discuss the weight loss assessments and greenhouse gas sensitivity analysis of Wak effects, and any points of agreement or disagreement on these documents. Today's discussions will therefore mainly focus on the following documents at 499, which is week of response to issue specific three. Issue specific hearing three

submitted at deadline for and as 179 addendum to take effects response to issue specific hearing three action points submitted just after deadline five Which I shall refer to collectively as the applicant's weight loss assessment.

00:15:41:03 - 00:15:58:24

Rep 534. The applicant's greenhouse gas sensitivity analysis of weak effects submitted at deadline five and rep 570. Assessment of potential Dogger Bank South on Dogger Bank A, B and C submitted at deadline five, which I shall refer to as the project's weight loss assessment.

00:16:00:14 - 00:16:17:27

The Examining Authority have been considering whether, as part of the discussion on these documents, cross examination between the relevant parties might expedite identify matters of agreement or disagreement. Can I start by asking you for views on this approach? If I could invite the applicants to provide their views, please.

00:16:20:24 - 00:16:50:16

Do the impossible for the applicant. As you know, madam, this was raised in an email from the the case team a couple of days ago. And what we said in our reply was that, um, firstly, we are, um, actively fixing a technical discussion with the uh, dog approach codes. Um, in the next few days. I'm not sure if that's been done,

00:16:52:07 - 00:17:07:13

which so I'm not told. I'm now told that it's fixed, but for Tuesday. Um, and so we think that that will be, um, a better forum for detailed consideration of, of the issues.

00:17:13:07 - 00:17:58:06

We've separately suggested a further meeting with Orsted. Um, and I don't think that's been resolved uh, yet to give that to, to have an opportunity to discuss the, the addendum that, um, that you just referenced In terms of today, we think and we said in our email that, um, it would be we would welcome the opportunity to make some sort of high level comments on the Wak assessment, uh, that the dog projects have submitted and also to, to respond to their sort of critique of about in their deadline five submission.

00:17:58:25 - 00:18:31:01

Um, and I imagine that the other parties will want to to the same sort of opportunity in terms of cross examination. We, we we don't we don't, uh, we're not particularly keen on that idea. We think it's better that the main discussion is taking place offline in the technical discussions, but we equally think that it'd be helpful for you, certainly from our perspective, to hear some of our, our headline observations. So we are not asking for cross-examination.

00:18:31:18 - 00:18:33:15

Um, and then.

00:18:35:17 - 00:19:09:15

We would potentially be open to some kind of, um, limited back and forth on a sort of round table type basis, which we also said now email. But we we don't feel we don't feel that strongly about that.

If you if you know what I mean. Because as you will have gathered, um, there are some quite technical issues in play here. Uh, and we're mindful that the panel doesn't have the benefit of an expert assessor, um, on this topic.

00:19:09:24 - 00:19:29:11

And therefore there must be an inherent limit as to how, particularly on such a complex and novel topic for offshore wind examinations. There must be a limit on how and useful it is to go past a certain point in terms of the technical, uh, technical discussions. So that's our position.

00:19:31:07 - 00:19:45:10

Thank you. Mr.. Well, that's noted, and certainly I think there'll be definitely opportunities to, um, raise the points that you've just identified. Thank you. Um, uh, Mr. Gordon, did you have, um, comments on this approach, please?

00:19:45:29 - 00:20:21:10

Yeah. Robert Garden for the project IPS. I think we are in agreement with the the applicant on on the approach to to the weight loss assessment. Um, we, we submitted as part of our deadline five submission, a critique, as Mr. Boswell has alluded to, of the the applicant's weight loss assessment. And we appreciate they've not had the opportunity to to do the same as yet. But given given the technical nature of the issues and in particular the modelling, etc., some of which is is commercial and sensitive, we think the best forum to have that discussion is, is in the meeting that has been arranged for, for next Tuesday.

00:20:21:27 - 00:20:42:15

Um, so I agree with the that we don't see the need for cross-examination today. Appreciate that. There are some points that the applicant would like to make and that we can respond to. But our position is that the meeting on Tuesday will hopefully flush out those issues, and we can provide an update at deadline six. In terms of discussion and potentially through the statement of Common ground process.

00:20:44:04 - 00:20:47:03

Thank you. And Mr. President.

00:20:50:06 - 00:21:14:27

Thank you, Madam Alex Dresden for the awesome peas. Nothing further to add. Obviously you'll have noticed that I don't have a weight expert from all still attending with me. It might just be helpful for me to very quickly set out the Orsted IP position on the applicant's or the addendum as 179 that formed the applicant's weight loss assessment on the Orsted IP, because I think that might influence where we go today. If I could do that briefly.

00:21:15:22 - 00:21:17:27

That was my next question. Thank you.

00:21:17:29 - 00:22:03:08

Okay, great. So yeah, the authors are grateful to the applicants for undertaking that assessment, which considers the impact on horses 1 to 4. Um, whilst you know, the authorities would always prefer as as stated throughout the examination, that an independent assessment of weight loss be commissioned by

the applicants in an attempt to act reasonably and given the stage of the examination that we're at, the Stopes are content to accept the figures presented in that weight loss assessment and will therefore use those figures to conduct a financial impact assessment showing the impact of the weight loss on those Orsted IPS assets, with the exception of Hornsea Four, because, as you know, the weight loss objection from that asset was withdrawn at deadline five.

00:22:03:11 - 00:22:38:18

And in addition, the Orsted IPPs are also withdrawing the weight loss objections from race bank links and westernmost, westernmost rough offshore wind farms. Um, whilst the weight loss assessment has not been done by the applicant specifically for those assets, the applicant stated in the in their assessment that wind farms outside the 100 kilometer range are unlikely to have a model impact or or feel an impact from the project that's being examined. So again, acting reasonably, the Orsted IPPs consider it's an appropriate time to withdraw the weight loss objections for for those assets.

00:22:38:20 - 00:22:56:09

And as I say, the Orsted IPPs will consider the financial impact of the remaining assets and look to submit that into the examination as soon as possible. And this will obviously lead to some updates to the set of protected provisions that the ore slopes have previously provided, which again will look to submit for for deadline six.

00:22:59:24 - 00:23:13:06

Thank you. Mr. president, you've anticipated some of my other questions as well, so that's helpful. So just I was making some notes while you said you were removing the objections for race buying links and Westeros. Is that is that correct?

00:23:14:12 - 00:23:16:06

Which was removed from five. Yeah.

00:23:16:08 - 00:23:35:07

Yes. Yeah. That's fine. Thank you. Um, and when you said you were going to be undertaking a, um, financial assessment, financial viability assessment on those, um, on the rest of the assets, which, um, objections have been raised in relation to weight loss. Can you tell me a little bit more about what you're envisaging that will will look like?

00:23:36:10 - 00:24:04:20

It will be similar to the financial impact assessment that the altarpiece submitted into the outer examination, which I believe was appended to our deadline five submission. And essentially it's a it's an analysis of the weight loss effects, given the figures we now have from the applicants and the financial impact they will have on the Orsted IPPs assets that are remaining in terms of loss of revenue, and obviously that will feed into our points regarding significance and the need and appropriateness for compensation via the protected provisions.

00:24:07:07 - 00:24:14:01

Okay. Thank you. Um, did the applicants want to make any any comments on Mr. President's comments?

00:24:19:05 - 00:24:56:20

Tune in both for the applicant. Um. Grateful that um studies withdrawing um its objections to to the three, uh, wind farms mentioned and understand, uh, Mr. President's point about wanting to, uh, to submit, uh, the financial assessment. Obviously, we fundamentally object to, uh, the suggestion of financial compensation, but it's clearly up to us to, to to submit that, um, as part of their case, should they decide to do so, which they clearly are.

00:25:01:08 - 00:25:38:26

Thank you. And okay, so just taking a step back, I note all of the parties comments regarding, um, cross examination. Um, what I'll do is I'll consider those. And obviously, um, at the relevant point, we can, uh, I can make a take a view on whether it's considered to be a suitable method of examination. So I'll move on now to, um, the published, um, MPs, uh, policies. I appreciate that we've discussed MPs policies and their relevance to weight loss at previous hearings, and we've received a number of written submissions on them.

00:25:39:18 - 00:26:11:14

Whilst I don't wish to repeat these at great length to assist the examining authorities reporting on weight loss. I want to run through some of these policies contained in Empson three and other offshore infrastructure and activities, and their relevance to weight loss. Where appropriate. I intend to refer to the draft MPs changes. I will take this opportunity to note the applicants and interested parties positions already made in the various submissions regarding whether other offshore infrastructure and uses in MPs three includes other offshore wind farms, which I won't repeat.

00:26:11:16 - 00:26:17:25

Now, I expect the applicants to answer the following questions on a without prejudice basis to their current position.

00:26:19:23 - 00:26:51:00

MPs in one states that applicants for CMP infrastructure must continue to show how their application meets with the requirements in this MPs and the other relevant technology specific MPs applying the mitigation hierarchy, as well as any other legal and regulatory requirements. Applicants must apply the mitigation hierarchy and demonstrate that it has been applied. Applicants should demonstrate that all residual impacts are those that cannot be avoided, reduced or mitigated.

00:26:51:28 - 00:26:58:12

The Secretary of State must be satisfied that the applicant's assessment demonstrates that these requirements have been met for CMP to apply.

00:27:01:00 - 00:27:28:03

MPs in three paragraph 2.8. 206, the applicant should engage with interested parties in the potentially affected offshore sectors early in the pre-application phase of the proposed offshore wind farm to resolve as many issues as possible prior to the submission of an application. Can the applicants demonstrate they engage with affected offshore wind farm operators early in the pre-application stage of the proposed development?

00:27:32:27 - 00:27:34:13

Involvement for the applicant.

00:27:38:19 - 00:28:14:03

I guess the starting point is, yes, we did engage in the normal way with, um, with the, uh, the dog project in particular. Um, in other words, there is, uh, custom and practice in relation to that, whether it's in terms of cable crossings and such, in terms of weight loss, um, there hasn't been the custom and practice in relation to engagement on weight loss at a pre-application stage in the same way.

00:28:14:27 - 00:28:47:10

Um, the first time that Waycross was formally raised with, um, with the, uh, the applicants was at the peer stage, which I think was August 2023. Um, we can't help noticing that there's a reference in, um, the, uh, dog approach codes. Uh, ref 5070, uh, assessment to um on.

00:28:50:12 - 00:29:21:24

The page numbering isn't doesn't quite work in this document, but under the references towards the end of the document there are 11 numbered references. One of them, number ten, is um wak. Impact of ground for RWC sites on Dogger Bank Wind Farm, 11th February 2021. One. And the author is GB Energy Analytics, SSE renewables. So this reference is included in the document, but we can't find a use of that reference if you know what I mean.

00:29:21:26 - 00:30:01:28

So but it does indicate that in February 2021, um, and consideration of the impact of document sales on the bank wind farm, because whilst that phrase is being used, we understand, um, to, to to refer to all three of the Dogger Bank projects. Um, so the question of weight effects was it would appear and it's not surprising considered by the Dogger Projects Bank in February 2021 and presumably prior to that, once the uh, DBS um projects were announced.

00:30:02:10 - 00:30:37:03

But nothing was raised with us until August 1923. Terms of the pier stage. Um, and there was, um, a up until the there was an intention, an expressed intention for us to engage on weight effects as in terms of the substance of that. I don't think that had got very far by the point that we then decided that we weren't going to engage on a detailed consideration of wake wake assessments.

00:30:37:16 - 00:31:23:03

But I think that the core point here is what what can reasonably be expected in the context of the history of this application. Um, and I think part of the problem is that there's an attempt to sort of retrospectively apply an interpretation of n three that was not generally accepted. Um, and so we say that we have acted in accordance with the normal approach that was understood, um, during the relevant period of time. We think it's notable that none of the other, um, uh, ground floor projects, uh, and nor did uh Ministries or North Falls, which are other projects in a relevant timeline act any differently to to us.

00:31:23:12 - 00:32:08:12

So in terms of whatever expectation was required by N3 in relation to us for the relevant period of time, we would strongly argue that we have acted in accordance with what was the accepted approach in relation to weight loss, which was, in essence, that that was not a matter for meaningful pre-

application, uh, discussion. And there's a wider context, as you appreciate, in terms of what mitigation is or, um, is not reasonably available in relation to weight loss, which you may be coming on to and which has already been subject of, um, of um, the different aspects of this examination.

00:32:12:14 - 00:32:20:27

Thank you. If I could just come to Mr. Garden, please. In terms of the timeline which Mr. Boswell's just set out, is that your understanding of events as well?

00:32:22:06 - 00:32:56:27

Thank you, Robert Garden, for the project. I mean, a first point, obviously, is that the onus of that policy that you had addressed is on the applicant to to engage in terms of the project specific timeline. Um, statutory consultation was August 2023, and this was raised by by the project in response, as a matter to be to be addressed in terms of substantive engagement on weight loss. And I think we've heard from the applicant there that there was none following following that date to, to the point of submission of the application.

00:32:57:05 - 00:33:33:26

Um, obviously the original application did did include the reference to the assessment within the environmental statement, but there have been no substantive engagement on on that point with the IPPs. And until the next step, I guess, in the sequence of events is then the the effective removal of this as an issue. The first issue specific hearing in this, this examination. So I would characterize the engagement as the project IPS trying to engage. And I think the statement of common ground that that submitted records the request that the projects have have made following statutory consultation to to engage on this point.

00:33:34:13 - 00:33:37:12

But but from our perspective, no substantive engagement.

00:33:50:14 - 00:33:53:00

And a question for um.

00:33:55:07 - 00:34:07:24

Uh, for the applicants, can the applicants, um, Demonstrate that they have attempted to resolve as many issues with regards to weight loss prior to submission of the application.

00:34:14:22 - 00:34:47:01

Julien Mosby for the applicant. I noticed that Mr. Garden didn't comment on my remarks about what was normal practice within the industry, and what I strongly suspect would have been has been normal practice by his client and and his general across the case. And so I would just like to reiterate that, um, that is a highly relevant point here, um, that, um, shouldn't be lost in the attempt to sort of retrospectively opposed, impose a different standard.

00:34:47:22 - 00:36:00:03

Um, so in relation to resolving issues, what we have done in, uh, our deadline for submission, um, for 099 is to explain, um, in the section on mitigation. What, um, what mitigation we we considered. I mean, remembering that the core piece of mitigation here, it relates to the Crown State leasing

process. Um, and so the Crown part on record and the entire industry, well, understands that one of the important considerations, not the only consideration, but one of the important considerations that was used by the Crown to set the weight to to set the buffer distance a 7.5km buffer distance, um, was the consideration of, of weight effects and that, as you know, set a crucial distinction between projects that were inside that, that then had to reach agreement with existing project that they were, as it were, to close to and projects that were staying outside of that buffer distance.

00:36:00:06 - 00:36:31:23

So that that is an absolutely fundamental step in this in this process that has been, uh, at the heart of of other licensing rounds as well. Um, and yes, the, uh, the, the applicants did, um, follow that step. And in the process, as it has been understood to date, that has been the key step that that developers, um, have, have, have observed

00:36:33:21 - 00:37:08:22

in addition to, um, to that starting point. The next point is that, um, the applicants, as I'm sure other developers have as well, have a long standing interest in understanding lake effects in different scenarios. Um, and we explained in our deadline for submission. The work that RWA has done, um, the extensive work that RWA has done. Looking at these issues on a generic basis to inform all of its project development.

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Um, and again, that is a an absolutely central plank to understanding what is sort of reasonable behaviour in this, in this context. And then finally, as we explain in the, uh, deadline for document, we did give specific consideration to.

00:37:33:20 - 00:38:14:18

We did give specific consideration to, um, the impacts on Dogger Bank a I think it's section 7.4 of the document, as we were, um, considering the, uh, layout considerations and weight considerations and the conclusion that obviously being the closest project by far and the most relevant to, to that consideration. Um, the and that concluded that there was no measurable, uh, distinction between the two situations that that was outside of the margin of error, and therefore there was no purpose in taking that forward.

00:38:15:14 - 00:38:49:28

I think there's a broader context here, which is that, um, uh, at this point has been made in this examination and also in other examinations that where you have a situation, as you do here, as to what you've got multiple wind farms in multiple different distances and different points of the compass. There is even if there were, um, mitigation steps available, how would you balance those different considerations, particularly where they involve different developments, as we do have here with Orsted on the one hand and the Dogger Project on the other.

00:38:50:03 - 00:39:25:23

So the whole concept of of of um of engagement and mitigation in this context is, is on the one hand complicated, but on the other hand has to be if there is a meaningful expectation in this, in this space, it has to reflect the, the, the broader policy position about maximizing output, which is a strong theme

of of EMP. Sorry, VN three. And there are at least two specific references to applicants being encouraged and expected to maximize output.

00:39:26:06 - 00:40:01:23

Um, and and the uh, the complexities of of design and and the potential, you know, within reason for, for debate about some of some of these issues. So in terms of the engagement that we have with the our approach to engagement, our approach to considering the impact on other projects in relation to weight effects. We have we have adopted, as I've just outlined, a multi stranded approach which has followed what has been the typical approach.

00:40:02:06 - 00:40:32:15

And um, the, the, the fact is that we everybody knows that what we have done is business as usual. And what is going on here is an attempt to, um, to try to retrospectively apply a different, um, standard in a way that is, uh, inappropriate and unreasonable. If we are going to adopt a different approach going forward, which is what, uh,

00:40:34:02 - 00:41:11:04

is being outlined, put forward in the, in the draft and changes are just been consulted on, um, then fine. But that has to be done for future projects where there is a proper discussion on the various aspects as to what type of the whole host of issues as to. How would one do a awake assessment on a an industry agreed basis? Then there's a debate about what we say, a limited debate about what meaningful mitigation and or reasonable mitigation measures are available.

00:41:11:17 - 00:42:04:13

Um, particularly what is the standard of, of reasonableness? Um, and then finally, is there any basis? We say firmly, no, for consideration of financial compensation. And there's certainly no credible basis for that on the basis of E and three as it currently stands. And the emerging policy is very firm in taking that off the table. Um, in going going forward. Um, so in terms of engagement and in terms of the business as usual approach that all developers have been adopted and dare I say, The the the project and Orsted would have adopted if they had been successful in a given round four, uh, situation comparable to this, um, that we have adopted the the normal and and the reasonable approach.

00:42:04:21 - 00:42:07:15

Yeah. When, when the context is properly understood.

00:42:12:00 - 00:42:17:10

Thank you. Mr. garden, did you have any comments that you wish to make on Mr.. Um, position?

00:42:18:04 - 00:42:34:21

Yes. Robert Garden for the project IPS. I think taking it back to to the question that was asked around around engagement and the specific policy. Um, I think I can I can see the characterization in it's referenced in the deadline, five submissions of this opportunistic interpretation by the project.

00:42:36:06 - 00:43:21:02

The timeline, I think, is important here. It was raised by the project IPS as an issue to be addressed in August 2023 through pre-application consultation. Um. Since then, we've obviously had the decision

on early Moore, which represented the previous Secretary of State's interpretation of the policy and that they applied and before before the withdrawal of weight loss issues from from this examination in the first issue specific hearing. We also had the Clean Power 2030 action plan, which identified as a significant issue facing the offshore wind industry, weight loss, and a specific adverse effect that was felt necessary to raise in that policy in terms of the draft iron three.

00:43:21:04 - 00:43:49:09

That again refers to greater clarification around policy. It doesn't refer to introduction of new policy. Um, so I think in terms of the timeline, that is all significant. And the point around engagement is that the project ships have sought to engage. The onus is not on them to engage in this process, but they have sought to um, and then I don't know if you have follow up questions, there are points to be made in relation to to the Crown Estate buffer that can be made now or later if you have specific questions.

00:43:51:15 - 00:43:56:04

I did have some questions slightly later on, Mr. Garden, if that's okay.

00:43:56:11 - 00:43:57:22

You're happy to pick those up later.

00:43:57:24 - 00:44:04:17

Thank you. Thank you. And Mr.. I'm just looking to see if you've got any comments on anything that the applicants have made.

00:44:05:17 - 00:44:45:08

Thank you, Alex for the awesome piece. I mean, echoes and points that Mr. Gordon has made. I think from the IPS perspective, just a couple of points to note. Firstly, the only bilateral call that has happened between the applicants and the IPS has been instigated by the Oslo peace rather than the applicant. So there's a theme within engagement or lack thereof from that perspective. Um, and secondly, you know, similarly on the the weight loss assessment that's now been put in front of the IPS, that deadline five of the examination that could have been addressed at a much earlier stage, as was requested by the Or stopes or as part of normal scoping procedures when an application is made.

00:44:45:10 - 00:44:57:26

So you know the updates and progress that we've been able to make, i.e. the withdrawal of certain objections and weight loss from certain Orcid IPS. Now that this weight loss assessment has been published, has come at a late stage in the examination.

00:45:02:20 - 00:45:03:25

Thank you, Mr. Tristan.

00:45:05:25 - 00:45:29:01

So just moving on to my next question. MPs in three paragraph 2.8.261 states that detailed discussions between the applicant and relevant consultees should have progressed as far as reasonably possible prior to the submission of an application. If MPs in three includes the consideration of weak effects, are the applicants able to demonstrate that this has taken place?

00:45:39:03 - 00:45:40:16

Impossible for the applicant.

00:45:44:21 - 00:46:17:27

Echoing what I've said in my previous response, we have acted. In accordance with normal industry. Um, the normal industry approach in relation to pre-application consideration of wage effects. Um, it's a matter of fact that we didn't meet, um, with the, uh, with the project prior to submission on the topic of wage effects.

00:46:20:10 - 00:46:37:26

Um. Some of the applicants. Um, I mean, I would also highlight that we did send a draft of the users chapter to Orsted and Dogger Bank ABC prior to submission. So there was engagement on that front. We received no comments from Orsted.

00:46:40:06 - 00:47:12:08

But I think the substantive I guess the substantive point is on the word reasonable. If there are multiplicity of topics where offshore wind farm developers are very used to talking to each other and generally have, you know, a mutual interest in trying to resolve things as soon and as pragmatically as possible. There are established solutions to those issues, and some, from time to time, new issues emerge, and then the industry sort of gets sort of engages with those, and then things, things move on.

00:47:12:18 - 00:47:44:16

And there is, you know, whilst the companies involved are engaged in a very competitive market, there is, you know, I think generally one with most people would agree that there is a good level of sort of collaboration on, on, on these types of issues. Quake effects is, as is hopefully obvious. Um, in one sense it's an old issue, but in this context it's very much a new issue. Um, the hour and more decision was not expected.

00:47:44:28 - 00:48:33:11

And, um, the there was considerable doubt as to how things were going to, to play out going forward. But in the context of what was possible, everybody also knew, because everybody has got their expert teams, um, at each of the major developers, what the, uh, realistic, uh, the firstly that the buffer distance was, we say, and we continue to say despite the attempt to chip away at this, uh, from, from the other parties, that the buffer distance when that was set by the Crown Estate, um, as part of the 20, as part of the round four design process where there was substantial engagement by, um, all of the main players in the market who had an interest in bidding into into that round.

00:48:33:21 - 00:49:10:16

And again, we've given multiple opportunities for the other parties to say we lobbied the Crown Estate for a bigger distance, and they didn't give it to us. Um, we lobbied the Crown Estate to put in a special provision in the agreement for lease that gave financial protection towards existing projects. And surprise, surprise, nobody has said that. Um, and so there was an acceptance that the, the buffer distance was taking this issue off the table. We say yes, it's a fact that the understanding of Wak as has evolved and continues to evolve as well.

00:49:10:21 - 00:49:31:01

But it was very much a understood and important industry issue at at the time that round, round four was being designed by and consulted on by the Crown Estate. So in the special circumstances of this case and they are special and arguably unique, um.

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I've been doing this for 20 years, um, over 20 years. And there's nothing comparable to this. What it's worth as a personal observation. There's nothing comparable to this, um, in terms of a new issue emerging that has gone off in a completely unexpected direction and has created the amount of, um, complexity and, and concern that, that this issue has, has done, particularly because and I appreciate there are two sides to this, and I'm speaking with one side of it, particularly because there was an established understanding and there was an established view on what those NPS meant and what one was expected and not expected to do.

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There is no history of putting fake assessments into environmental statements. Um, the conclusion that we put in was the first time, I think, that had that had ever been done, that we've subsequently withdrawn. There is no guidance on how to do these assessments. There is no specific guidance if it's required on how to calibrate significance, and there's absolutely no track record of financial compensation, or with the exception of the more mitigation obligations being imposed.

00:50:50:05 - 00:51:36:07

So it would be unreasonable to suddenly impose a retrospective standard on this situation, which I'm. I appreciate that, madam. You have a difficult task because you have got to apply the words that are in the, the in, in the MPs. Totally understand that. Um, but that has to be done, I submit in a, in a, in a reasonable way that that takes account of the context here and doesn't artificially impose a retrospective, retrospective standard in relation to our conduct and conduct of Multiple other developers who have acted broadly, exactly as we have acted.

00:51:39:13 - 00:51:44:03

Thank you. Mr. Gardner, Mr. President, did you have any comments on that?

00:51:47:06 - 00:52:25:12

Well, Robert Garden for for the project IPS. And again, I come back to the timeline and it's our submission on this is relatively succinct, which is effectively there has been, um, a change, a change in the industry historically. Ten, ten years ago, there were not this significant number of offshore wind farms in the sea being developed next to each other. So historically it hasn't arisen as an issue in the offshore sector. But for the last couple of years, there has been a clear direction of travel. And effectively, our submission here is that the applicant has elected to to disregard that in its approach up to deadline for of this this examination.

00:52:25:21 - 00:52:35:28

Um, and proceed. I believe it was expressed in one of the first editions in the hope that there will be a change in policy, whereas what has come through is greater clarification on policy.

00:52:39:00 - 00:52:39:22

Thank you, Mr..

00:52:43:19 - 00:53:23:15

President, for the altarpiece. Just a point on the the leasing round for and the buffer distances that was made. So it's the orthopedic position that as has kind of been alluded to and understanding of the true extent of far field Wak effects, i.e. their extension beyond the buffers imposed in the leasing round for process was only really beginning to emerge, certainly from authors perspective, after those buffers were established in in 2018 and 19. And it's it's the lack of awareness at that time rather than the fundamental existence of the buffers that explains the the relative lack of planning disputes prior to the the hourly more examination and the leasing round for all projects.

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And I note that the leasing round four projects are all currently facing weight loss based DCO objections, so the industry understanding of the extent of Wak effects has matured considerably since that round four Leasing and Orsted communicated to the market for the first time on this topic in 2019, in which they warned the market that they'd observed weights persisting much longer than previously assumed. Um, so what I think is it's been failed to acknowledge is that new industry information coming to light from 2019 onwards, and therefore the applicants should have reacted to this and undertaken assessments which they did not, presumably because of the commercial implications of of doing so.

00:54:04:15 - 00:54:18:07

It's been referred to as business as usual, but we submit that it was incumbent upon the applicants and another round for projects to recognise the new understanding of far field wak effects that emerge from 2019.

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Thank you, Mr. Garden.

00:54:30:11 - 00:55:06:05

Yeah. Robert Garden for the project. I just wanted to endorse that point about emerging industry knowledge and the position effectively having developed since the round four buffer buffer, but also a further point, um, in relation to the to the methodology, of course, part of the engagement that we were seeking was to to agree a methodology for assessment of, of weight loss effects and note in the comments. So again, that is something that we feel could have been resolved in the period for from August 2023 when we first raised this as an issue to to almost two years down the line, where we're having the first substantive meeting to discuss that methodology.

00:55:09:17 - 00:55:14:17

Thank you, Mr. Gordon. Um, did you want to come back on that?

00:55:14:19 - 00:55:20:01

Yes, please. Uh, Julian Boswell for the applicant. Um, firstly.

00:55:22:14 - 00:55:31:28

Firstly, we We don't accept well, in terms of the changes in the NPS. It's obvious that these are a lot more than just a clarification, because if

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for the first time express consideration of weight considered weight effects is being put into or being proposed to be put into the NPS, if it was clear before, then those changes wouldn't be needed. The changes that are in there are clearly substantial, clearly material such as so to simply say, oh, that's just a mere clarification. It's not fair. Comment. Um, my second point is that we're having some incredibly high level observations made here, which about the history of Wak effects and and so on.

00:56:06:15 - 00:56:37:07

And we don't think that, um, it's, it's, it's reasonable for you to be to be, to be relying on them in those terms. Yes. It's correct that Orsted made an announcement in late 2019, which got a lot of attention, and it affected their share price for a period of time at that time. But it's in the nature of those announcements that they will have been working just as a matter of common sense. They will have been working on that for an extended period of time. They will have known that was going to have an impact on their share price.

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They will have had a concern about that within that organization, and reasonable to assume comparable concerns with other organizations. The notion that they were incapable of of lobbying the Crown, for example, on that, recognizing that there is ongoing and extensive offline engagement between the Crown and major developers in the U.K. on a routine basis is not credible. And furthermore, the notion that that everything falls on the applicant, we've got this major new area of concern, apparently, um, the project is in February of 2021.

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Um, did an analysis of the AP impact. And yet they sit back for two and a half years and say nothing, um, that this, this issue was not being raised in, in, in industry planning forums as being something that, uh, developers now needed to engage with. There's a way that these things work, and it's very, very clear that that that that was not the way this this was playing out. There are consenting conferences that are held.

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There are consenting discussion forums with between the major developers. The whole question of weight class was not being discussed in the light of the 2019 announcement by Orsted, or ongoing research in relation to further field weight assessments. That is not what happened at all. What happened instead was that an opportunistic interpretation of N3 three was argued for unexpectedly in real flats against the outer moor application, and that unexpectedly led to a requirement being imposed on Alan Moore, which was not consulted on by

00:58:35:03 - 00:59:22:25

the Secretary of State before it was before it was included. And then that opened up an open question as to how that unexpected result was going to play out thereafter. And what we have had is a, um. If there's a lot of uncertainty about about how that would play out. Wasn't it all predictable that we would have had as many examinations focusing on this issue in the same in the way that it has? Um,

we haven't had, uh, in terms of there then opening up that we are we are effectively being told a requirement to to consider mitigation as between projects, which has never been historically considered in the way that it's being argued should be.

00:59:23:00 - 00:59:56:22

And then, extraordinarily, there's the suggestion that, um, like for like indemnity payments running to hundreds, potentially hundreds of millions of pounds are suddenly, suddenly coming into view. Um, so we, we there's a real artificiality to, to to the way that this is being characterized. Um, from, from, from from the other side of this, of this debate. Um, and the fundamental point is that the Crown Estate buffers were central to this.

00:59:56:24 - 01:00:33:03

Everybody understood that, um, and having respected those buffers on any rational basis, you then have to consider what reasonable mitigations are available. Um, and there that has to be done, you know, in a, in a sophisticated way, recognizing the different stages of project evolution and so on. And we say that we have acted entirely within the bounds of reasonableness in relation to that, to the extent to which that requires meaningfully to us to engage with other projects is seriously.

01:00:33:05 - 01:01:09:17

Up, up, up or up for debate. Because if there aren't meaningful mitigations available, then that has to limit, as we've said in our submissions, about collaboration. If you're going to have collaboration or engagement, there has to be something meaningful to talk about. If the dog approach goes or Orsted had wanted to put into the market their concerns on this score, they could have done so. Um, they haven't pointed to any any such steps. They could have been writing thought pieces and attending conferences saying, uh, in in a planning context, you know, you developers should be doing X, Y, and Z.

01:01:09:21 - 01:01:31:23

Instead, they have sat back. The reason they've sat back is because they weren't expecting the other, more decision to go to happen at all. Having having it having happened, they have then sought to take advantage of that. Um, in the context of of of of of what opportunities the planning system afforded to them. And so the, um.

01:01:34:24 - 01:01:36:25

Yes, I think so. I.

01:01:39:09 - 01:01:44:14

I think that I think I think you'll understand that

01:01:46:13 - 01:02:00:23

there are two very different version of events being presented to you here. And I think one of them, um, is far more, uh, history, um, and uh, and fair comment attached to it at the other.

01:02:04:00 - 01:02:05:21

Mr. Burstein wants to add a point.

01:02:06:11 - 01:02:07:02

I think.

01:02:07:04 - 01:02:38:28

Speaking to the point on, uh, long wigs, Wakes up being first sort of made public, at least to sort of the financial aspect of the market in 2019, that that's maybe a fair point for the Orsted projects, as those are 30 plus kilometers away. I think one can't, uh, apply that to the project cost for the 7.5km. We used and assessed our lake impact with an eddy viscosity model.

01:02:39:00 - 01:03:09:09

That's been an industry widely used model for a decade plus. So that and it assessed quite nicely with some of the newer models that, um, that came in around that 2019. So the impact there would have been clear, uh, since since I've been in this industry, which is quite a while, I think. I think that at that point there's no developing understanding that would impact the, uh, the project as.

01:03:09:11 - 01:03:09:26

Goes.

01:03:13:21 - 01:03:28:16

Okay. Thank you. Um, I just wanted to go back to a point, um, made slightly earlier. Um, regarding the, um, circulation of the draft, um, s chapter. Um,

01:03:30:13 - 01:03:47:16

can you tell me what was contained within that, um, s chapter with regards to weight loss? Um, and you said that, um, it was shared with other parties. So which parties was shared with and what comments did you get on that? Were there any comments in regards to weight loss?

01:03:52:05 - 01:04:24:12

From the applicants? Um, in respect to it included. So we sent to SSA and it included the assessment on seeing what the conclusions of the assessment, um, on Dogger Bank a um from which they did request to engage further on the assessment, and it was sent to us where no comments were received. Obviously, there was no assessment provided against the for the impacts but impacts on or said projects.

01:04:24:28 - 01:04:38:14

Um, noting that we provided a conclusion in that chapter on the basis of the assessment work we've done on Dogger Bank A outlining that there therefore couldn't be facts further afield because we felt they were negligible.

01:04:41:05 - 01:04:52:20

So the project ships responded and requested further consultation. Just so I'm understanding that correctly on the basis of the the draft statement.

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Yeah, they wanted to further information about the model. Um, and did the work.

01:04:57:27 - 01:04:59:10

Did you provide that to them?

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No, we did not.

01:05:07:17 - 01:05:08:09

Thank you.

01:05:23:02 - 01:05:32:15

Um, Mr. Boswell, can you confirm, are there any agreed mitigation measures between you and any of the interested parties with regards to weight loss?

01:05:38:03 - 01:05:39:28

Julian Boswell for the applicant.

01:05:43:09 - 01:05:43:27

Great questions.

01:05:52:05 - 01:05:57:16

Adam. I'm assuming you mean actually agreed. Already agreed, as it were.

01:05:58:26 - 01:06:00:02

Yes, I do. Yeah.

01:06:01:20 - 01:06:16:04

There's no, um. There's As there's nothing specifically agreed with the project with the other projects as regards weight loss that could be characterized as mitigation. No.

01:06:24:15 - 01:06:25:07

Thank you.

01:06:27:14 - 01:06:54:13

Paragraph 2.8.342 of NPS in three states that where a proposed offshore wind farm potentially affects other offshore infrastructure and activities. A pragmatic approach would be employed by the Secretary of State. Notwithstanding your position to date on this point. To what extent do you consider that draft MPs in three paragraph 2.8.233 clarifies this point.

01:06:57:26 - 01:07:01:01

I can read it out if that would be of assistance.

01:07:02:12 - 01:07:03:28

It Two three, three.

01:07:17:03 - 01:07:31:18

This is obviously the paragraph. The expectation that weight effects can be wholly removed, nor that into project compensation arrangements are necessary to mitigate. Though developers may opt to take some of those processing approaches outside of bankruptcy.

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Correct. Yes.

01:07:33:27 - 01:07:35:13

So the.

01:07:39:04 - 01:07:40:12

I think the advice.

01:07:43:13 - 01:08:21:21

On the assumption that we are applying the M3 to offshore wind under the current draft, which I think is the current designated policy, which I think is what you're asking us to assume, then we think this paragraph is extremely important that the advice or the expectation that a pragmatic approach should be applauded. But sorry, before I get to your specific question, that's okay. Because because you have to remember that these provisions are written to cover multiple industries and therefore, um, and, you know, CSS aggregates, etc.

01:08:21:29 - 01:09:09:01

there are a number of other industries that are being covered by this, by this language. And as we've already said in our submissions, what a pragmatic approach looks like, we say has to take into account the circumstances of the interaction between the offshore wind sector and this other industry. Now, if you then seek to apply the wording to as between offshore wind projects, which in some cases, if you if you look at them in isolation, you you you you can, but there are certain paragraphs where it's a real it's more than a struggle because it appears in terms to not to not allow that.

01:09:09:06 - 01:09:15:19

But clearly this is one that does allow it. Um, uh, again. So.

01:09:18:08 - 01:09:58:13

A pragmatic approach takes into account, I think would take into account industry expectations, industry realities. Um, and then coming on to your specific question, um, because what we've said broadly is if a, if a pragmatic approach is being adopted, that would, you know, give a lot of weight to the fact that the Crown Estate buffer distance had been respected, for example, it would give a lot of weight to the fact that weight mitigation measures, as between projects have not, uh, normally been seen to be available.

01:09:58:25 - 01:10:32:17

And again, just a quick aside, if I may. In our deadline for submission, we included a section at the back entitled A Historical Example, which highlights the fact that as far as our, um, uh, the applicant's experts can see in the layout that the approach codes themselves have reached, particularly for Dogger Bank A and B, but also for Dogger Bank C, there doesn't seem to be any indication that they sought to alter the layout that that they would have done if those projects had existed.

01:10:32:19 - 01:11:04:06

You know, completely in isolation. We say that that is an indication, another indication that there is a general acceptance that there are very limited, um, opportunities. Brackets if any, brackets to, to to to mitigate projects uh into into project wak effects. And those projects are are closer. They look like they're about five. They're certainly closer than you can just see with the naked eye that they're closer than 7.5. Looks like they're probably something like five kilometers.

01:11:04:15 - 01:11:10:18

So the coming on to to to your specific question. Um,

01:11:12:05 - 01:11:43:06

it's the new text that strictly only applies going forward, but which can be given some weight, as we know, as we've highlighted in our deadline, five submissions to the current decision, um, that, uh, yes, that no expectation is good. There's two parts to it, obviously. No expectation that weight effects can be wholly removed. Yeah. I mean, that's an understatement, isn't it? Because the only way you can wholly remove the weight assessments is not to build a project. Um, so, yes.

01:11:43:08 - 01:12:24:27

So there is an acknowledgement that there is a limit to, to to to to what can be done. Um, one might have expressed that slightly differently. Um, and then and then no expectation that inter project compensation arrangements are a necessary means to mitigate the impact of wage effects. And we would totally agree that that is a pragmatic. And I think there are some much bigger points in play, but certainly you can very much characterize that as being a pragmatic acceptance of of what the realities are, um, of an industry of this kind, um, which in some respects is, is a little bit unique.

01:12:25:08 - 01:13:07:08

Um, but but also, you know, what would the alternative be? The alternative would be to bring in, um, a new system of a massively contentious and contested system of financial compensation arrangements as between projects through the planning system. And a brief aside, if I may, that in the final brief aside, um, in the draft protect provisions that that the dog approach is understood put forward. There's a slightly surprising reference to the possibility of a national sort of scheme for financial compensation, which could be taken to imply that there is a proposal for that.

01:13:07:15 - 01:13:42:09

There is no proposal that we are aware of or that, um, and, and therefore, I think it's important that you understand that there isn't something bubbling away that, that that would potentially come forward as a national scheme that would then overtake these events because there is in a very different field, namely the HRA side of things. We do have something called the Marine Recovery Fund, which is bringing forward a strategic solution, as it were, that is overtaking the projects, sort of trying their best to deliver project level solutions.

01:13:42:11 - 01:14:17:25

So I just want. I just want you to be absolutely clear that from from the applicant's point of view, we're not aware of any serious commentary or any commentary to Otherwise, there is no proposal to bring in a national system. So apologies if that's a longer answer than you were expecting. But in terms of is

that an example of of of pragmatism? Um, yes. It's within the I think it's an example of some other things as well. But yes, it is an example of pragmatism applying, um, the specific considerations that, that, that are relevant to this industry.

01:14:27:08 - 01:15:11:11

I think the final dimension to all of this, if I may, is that over overwhelmingly, we are trying to respond to the imperative to deliver for 20, 30 and other relevant targets by maximizing generation and anything, as we've emphasized in our deadline or submission, anything that you do to that, to, to, to, Ta ta. If you don't, if you don't focus on maximizing aggregate generation as between your new project and the existing projects, then there is no basis for delivering a meaningful benefit to other projects that doesn't have a massively disproportionate or disproportionate benefit to to the existing to the new project coming through.

01:15:12:08 - 01:15:13:02

I'll stop then.

01:15:14:19 - 01:15:21:17

Thank you. Could I invite Mr. Garden if he's got any comments on the points Mr. Boswell's just set out.

01:15:22:26 - 01:15:32:12

Yeah. Robert. Robert Garden for the project. Can I just check that you can hear me? Because I think we've been having some tech issues at this side. Um, and I can't. I can hear my video.

01:15:32:14 - 01:15:35:18

On see, you know, but we can hear you. Fine. So do.

01:15:35:21 - 01:16:10:25

Okay. Yeah, we've we've heard everything, so we've not missed it. Missed anything. So. Thank you. Um, I mean, I think that the, the fundamental point is that we have demonstrated the significance of the impact to Dogger Bank A to Dogger Bank B and to Dogger Bank C, which which are effectively three phases of one project. That's how they've been treated by by the project in bringing those those developments forward. And we've demonstrated the significant impact in terms of annual energy loss and also in terms of financial impacts and and demonstrated in the context of all.

01:16:11:01 - 01:16:51:19

And it is relevant again, how much more significant the impacts are on this project here than they were in that case. So our case is that there is substantial weight to be given to to the projects, and it would go against the precedent and the emerging policy to to adopt some kind of pragmatic approach and not impose requirement for potential future mitigation. And I say potential future mitigation, because the way we have sought to deal with this is effectively to design a suite of protective provisions that do not oblige mitigation measures, but allow for mitigation measures to come forward in the future and be taken into account in an updated weight loss assessment in the future.

01:16:51:21 - 01:17:22:05

Should should they come forward? And if not, and if there is no mitigation, then then to provide compensation and through through the mitigation hierarchy. So I think that's that's the first point. And there is obviously evidence in front of you of the significant effect that we say is caused to the projects. I think it's important in the context of your question around, um, emerging policy. 2.8233 um, to note that there will be there are consultation responses on that, effectively seeking the removal of that.

01:17:22:07 - 01:18:08:24

But by virtue of bringing weight loss and providing greater clarification around that process, introducing it clearly as a material effect to address the applicant's case, but then saying it doesn't necessarily need to be mitigated or compensated, and we will be submitting responses on that. But I think the bigger point goes to this 7.5km kilometer buffer in terms of how two, three, three is raised. If the applicant's case around everything sort of starts and stops with that buffer in terms of weight loss was correct, there would be no need to reference to compensation agreements and no need to for for applicants to effectively be given the choice, because of course, within that 7.5km buffer, they do not have the choice as to whether an agreement is in place.

01:18:08:26 - 01:18:16:07

You need written consent. So that's the fundamental point on the 7.5km buffer in terms of emerging policy.

01:18:19:19 - 01:18:23:19

Thank you. Mr. president, did you have anything that you wanted to add?

01:18:26:10 - 01:18:59:20

Alex Dresden for the Orcid IPS. So firstly, a point about the 7.5 km buffer. Just referring back to the Crown Estate's responses to XTC won in the Outer Dowsing examination, which the author stops He's appended at appendix one to their deadline one submission, in which the Crown Estate stated that the 7.5km separation distance was used for the purpose of processing project proposals in the tender, only being higher than the five kilometer buffers that are specified within the seabed lease agreements introduced in round three.

01:18:59:23 - 01:19:38:29

This was for the purpose of de-risking the round for tender, by providing additional mitigation and assurance to participants through limiting proximity. And in that outstanding submission. It was also acknowledged that inter farm wak effects can extend beyond these buffer distances. So just a point there about the the Crown Estate submissions on this matter. I echo the points made by Mr. Garden in relation to significance and compensation. From the author's perspective, the significance of the impact on the remaining assets that hold weight loss objection will be furthered by the financial impact analysis that we've referenced earlier, and which will be submitted for examination as soon as possible.

01:19:39:10 - 01:20:17:29

And Mr. Garden Gardner also referenced correctly that there are consultation responses to draft MPs and three that are relevant, particularly regarding paragraph 2.8.233, which you've, um, which you've alluded to this morning. Um, I just like to just flag a couple of points that Orsted have given me

permission to say in this hearing regarding their responses, and that is that they are concerned by the text proposed in 2.8.233 and 2.8.316, which is in their view unhelpful, potentially contradictory and will not encourage applicants to reach an agreement, which goes to the pragmatism point that you've just alluded to.

01:20:18:06 - 01:20:51:06

It could be inferred via those paragraphs that compensation is not necessary and that this issue falls outside of the planning process. But Orsted firmly believes that the planning process offers the only time bound, legally secure way to ensure that impacted projects are adequately protected and that precedents aren't set, whereby a new development can come in and pull the rug from an existing development without appropriate compensation and compensation agreements are a form of mitigation that is likely to be necessary to address residual impacts, which are not addressed by other physical mitigation.

01:20:51:12 - 01:21:34:01

And without the planning lever, there is a risk that offshore wind projects will be materially commercially impacted by waiting projects with no recourse, which, as I say, is a serious concern for Orsted and other impacted developers and sets a precedent that goes against the pragmatism point that you've you've just made. So in Orsted's view, paragraph 2.8.233 is unhelpful and potentially contradicts earlier wording in the draft NPS, which says that applicants should take all reasonable steps to minimise as far as possible, and that could be considered to include compensation where where appropriate, and this level of detail regarding a specific impact and the appropriateness of compensation isn't found elsewhere in the in the M.P.s.

01:21:34:09 - 01:22:05:28

And the statement that there's no expectation that into project compensation arrangements are a necessary means to mitigate the impact of wake effects. Is is inappropriate and assumes the outcome because there are physical mitigation measures that can reduce wake impacts. But it's likely that these measures, it's unlikely that these measures will be sufficient to remove the concern over the remaining wake. So compensation very well may be required as a form of mitigation as part of the reasonable steps taken by the applicant to protect asset viability.

01:22:08:15 - 01:22:25:16

Thank you, Mr. Dresden. You are speaking relatively quickly, so I was trying to make some notes there. Um, fine. No, no it's not, it's not a problem. I just wanted to check. So it was the paragraphs you referenced were obviously, um, to put 8.233 and 2.8.216 that you said that.

01:22:25:27 - 01:22:26:12

Sorry.

01:22:26:14 - 01:22:30:00

Uh, 316. Fine. Okay. Thank you. Yes.

01:22:30:02 - 01:22:40:23

Um, that's the paragraph that states that where an applicant has demonstrated that they have made an assessment of intra ray wake. They have taken all reasonable steps to minimize, as far as possible, the impact of wake effects.

01:22:41:24 - 01:22:44:12

Thank you, Mr. Kasdan. Mr. Boswell.

01:22:47:18 - 01:22:52:06

Would it be possible to just respond on 2 or 3 points, just briefly?

01:22:52:24 - 01:22:53:12

Yes.

01:22:54:02 - 01:23:32:07

The first was that, um, Mr. Gordon said that the Protect provisions did not require, um, other non as it were, financial mitigation. Putting aside the fact that it made the point that financial payments would be compensation would not would normally be referred to as mitigation. Compensation is different from mitigation. But in paragraph 42 of the protected provisions, it's not the case that that that other steps are optional.

01:23:32:09 - 01:24:03:03

It says Is that, um, the weight, the weight loss mitigation scheme, which shall include but not be limited to, and then the whole financial mechanism. It's clearly, um, indicating that there is a requirement that there be other, um, non-financial steps included. So that's just a point of fact or correction, if I may, on the current drafting of that.

01:24:03:12 - 01:24:36:01

Um, in terms of the Crown Estate point, there is there is another submission by the Crown which makes it very into another examination. Uh, and I think it may it's one of the West Coast ones where it makes it very clear that wak effect was one of the considerations that went into to determining the 7.5km buffer. So any suggestion that that wasn't consideration is not is not correct.

01:24:36:09 - 01:25:09:29

And just finally, but briefly, because obviously this is you're going to get lots of continuing submissions on this topic. It's absolutely open to the Secretary of State to decide that financial compensation is not an appropriate sort of policy in relation to this matter. Um, and it's perfectly reasonable for the Secretary of State. I mean, it's extremely unusual for financial compensation to be paid in, in, in, in, in the, in the planning context.

01:25:10:09 - 01:25:41:08

Um, and it's unusual for compensation to be required normally. Um, the, you know, the process is conducting an assessment. Um, having a pre mitigation sort of interim conclusion. Applying mitigation. Ending up with a final um, post, uh post mitigation, a conclusion which has a residual effect. One does not normally then go on to. Compensation. Normally, what happens is that that residual effect is weighed in the balance.

01:25:41:10 - 01:26:10:10

And that goes to whether or not, um, the consent is granted at all. By exception, there are incredibly limited examples of compensation being, uh, required or imposed, the classic one being, as we've said in one of our submissions in the HRA context, in the in the derogation scenario. So the notion that somehow axiomatically. Well, there's still a concern. So we must um, then we must have a financial, uh, have a financial.

01:26:12:11 - 01:26:33:29

Does not follow at all. It's completely open to the Secretary of State to say what he has done in this, in this, in this policy, obviously. Um, then the project can then argue that he shouldn't do it. Um, but So we don't agree that there is a contradiction or the inappropriateness that that is being suggested.

01:26:38:16 - 01:26:54:06

Okay. Thank you. Just on the point of protective provisions, that is something I want to come on to you later on. So I know I know your point there, Mr. Boswell. Um, Mr. Gardner, I can see that you've got your hand up. Um, and it was following, um, Mr. Boswell's comments on protective provisions. Was it on the point of protective provisions, or was it something else?

01:26:55:02 - 01:27:27:13

Robert Garden for the project. It is on the protective provisions, but it is a clarification I would like to make now, because paragraph 42, um, does not oblige mitigation measures effectively. The the steps that we set out in our protected provisions are twofold. First of all, you have paragraph 41, which, um, obliges the undertaker to undertake an assessment which shall take account of design, technical or operational mitigations that have been implemented but doesn't oblige those to be implemented. So the assessment is designed to take those into account.

01:27:28:03 - 01:27:39:28

And then for two which secures the compensation piece. That that does absolutely say that you shall secure the mechanism, because that is the point that then secures the compensation based on the updated weight loss assessment.

01:27:44:27 - 01:27:46:01

Okay. Thank you.

01:27:47:19 - 01:28:17:16

So moving on to my next question. Um, paragraph 2.8.345 of MPs in three states. The Secretary of State should be satisfied that the site selection and site design of a proposed offshore wind farm has been made with a view to avoiding or minimising disruption or economic loss to other offshore industries. Please can the applicants demonstrate how they've complied with this policy in regards to weight loss? If MPs Ian three applies to its effects.

01:28:24:15 - 01:28:26:09

Duty and possible for the applicant.

01:28:29:27 - 01:28:30:12

Well.

01:28:30:26 - 01:29:01:27

The first point to make. I'm afraid, is on the on your final point about the assumption where you have a sentence that is dealing with in a section in a national policy statement that's dealing with offshore wind farms. And then it talks about other offshore industries. It is, um, it's doing real violence to the English language to suggest that that can somehow include, um, offshore or other offshore wind.

01:29:02:18 - 01:29:41:01

And so when that statement was written and when it was signed off and designated and all the rest of it and consulted on, nobody would have assumed that that was applied to other offshore wind farms. So if we now step into the the world of, of, of of doing something that, um, we say it's clearly not applicable, then, uh, in terms of site selection and site design, we again, we, we have um, we have followed the, uh, we've been through, uh, the ground floor process.

01:29:41:11 - 01:30:04:01

We have respected the, um, the, the 7.5km buffer, which included weight loss as its consideration. Notice that the phrase here is at the core of this policy. The phrase is linked to avoiding or minimising disruption or economic loss.

01:30:05:29 - 01:30:40:19

The. Does this count as disruption? Um, discuss. Does does this count as economic economic loss? Um, so I think the um without repeating everything that I said earlier. We have acted in accordance with the normal approach to to site selection that was accepted in the context of round four, um, process and the buffer that was accepted by industry in the context of that, that included weight loss.

01:30:41:01 - 01:31:14:27

Um, and we do not, um, if one is forced to try to apply this, this language to that, we think that is the key step in terms of, um, site selection and in terms of site design. We have already submitted around the deadline for, um, our explanation of the the mitigations that we have considered, including specific consideration of Dogger Bank a as, as the the closest, um, the closest wind farm.

01:31:15:05 - 01:31:47:17

So as far as um, avoiding or minimising disruption or economic loss in the context of, um, the sort of the what you might call the core intent of this paragraph would be it that mainly it doesn't apply to offshore wind farms. Um, uh, on the face of its language, then we would say that we have done, uh, what what would reasonably be expected of us in the context of this industry and how it has operated at the relevant time.

01:31:53:13 - 01:32:00:00

Thank you. And just Mr. Gordon or Mr. President, have any comments on, uh, Mr. Boswell's point?

01:32:02:10 - 01:32:25:22

Robert Garden for the project? Um, nothing. Nothing major to add other than than clearly what we are looking at now is mitigation. That's been submitted in a report at deadline for of an examination, not through the pre examination process and engagement and again reiterate the point we've made that we have demonstrated significant economic loss through through our submissions to date.

01:32:27:29 - 01:32:29:12

Thank you, Mr. President.

01:32:31:18 - 01:32:43:15

Thank you, Madam President, for the slopes. No, nothing further to add to what Mr. Gardner just said there. Other than that noting, as I said, that the slopes demonstration of significant loss will come via their financial impact assessment.

01:32:44:13 - 01:32:45:05

Thank you.

01:32:48:04 - 01:33:21:16

Um, just to wrap up on, um, on the published MPs and my questions on these before we take a break. Um, so if we go back to the tests for the proposed development to qualify as CMP, if the examining authority or Secretary of State found that the effects on other offshore wind farms were captured by Eon three, namely with regards to weight loss, and the applicants were not able to demonstrate compliance with the requirements in MPAC and three that we have just run through all that.

01:33:21:18 - 01:33:32:14

The mitigation hierarchy has been appropriately applied to weight loss effects with the examining authority or Secretary of State have to conclude that CMP would not apply to the proposed development.

01:33:50:28 - 01:34:12:08

I preferred to join with the applicant. Um, I'm conscious that the way the whole CMP, uh, provisions are presented are quite complex, and I would prefer to respond to that in our written reply afterwards rather than answering. Sort of quite a meaningful question. Um. On hoof.

01:34:15:09 - 01:34:31:16

Noted. Okay. That's fine. We'll put that down as an action point to answer that point. Um, in writing. Um, could I offer, uh, a similar question to, uh, Mr. Gordon? Equally, if you prefer to respond in writing, that is available to you.

01:34:33:03 - 01:34:39:08

Robert Gordon, for the project. Yeah. I think we would like to reserve our position and respond in writing on that point.

01:34:40:16 - 01:34:42:06

Noted. And Mr. Dresden?

01:34:43:24 - 01:34:49:23

Yeah, it's chosen for the author. I imagine you can preempt my response. I'll complete the set and say that we'll do the same. Thank you.

01:34:50:05 - 01:35:08:04

Thank you. Okay. Um, I think that's an appropriate point in which to take a break. Um, so we'll break for 15 minutes. Um, so the time now is 1106, so we'll come back at, uh, 21, um, minutes past 11. So the hearing is now adjourned.