13 JUNE 2025

DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)

DEADLINE 6 SUBMISSIONS

on behalf of

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

comprising

POST-HEARING SUBMISSIONS INCLUDING WRITTEN SUMMARIES OF ORAL CASES

COMMENTS ON THE RESPONSES TO EXQ2

FURTHER INFORMATION REQUESTED BY THE EXA UNDER RULE 17 OF THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

COMMENTS ON ANY FURTHER INFORMATION/ SUBMISSIONS RECEIVED BY DEADLINE 5

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF
T +44 20 7367 3000
F +44 20 7367 2000
cms.law

DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)
DEADLINE 6 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.
5. DBA Projco, DBB Projco and DBC Projco (together the **Projco IPs**) are making this submission in respect of the Applicants' 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 the Projcos' previous submissions at Examination, including:
    a. Relevant representation (RR-007);
    b. Deadline 1 Submission (REP1-071);
    c. Deadline 2 Submission (REP2-071);
    d. Deadline 3 Submission and Response to the Examining Authority's (**ExA**) First Written Questions (REP3-063);
    e. Deadline 4 Submission (REP4-117);
    f. Deadline 5 Submission and Response to the ExA's Second Written Questions (REP5-071); and
    g. Wake Loss Assessment Report submitted by the Projco IPs (REP5-070).
6. The Projco IPs' response to the ExA's request for further information under Rule 17 of the Planning (Examination Procedure) Rules 2010 issued on 9 June 2025 is set out at **Appendix 1** to this submission.
7. The Projco IPs' comments on the Applicant's response to the ExA's Second Written Questions (**ExQ2**) is set out at **Appendix 2** to this submission.
8. The remainder of this document summarises the Projco IPs' oral case made at Issue Specific Hearing 6 (**ISH6**), responds to points made at ISH6 including the ExA's Actions Points 2 and 3 (paras. 81-83), and comments on the Applicant's submissions at Deadline 5.
9. The Projco IPs submitted their Wake Loss Assessment Report (Assessment of Potential Dogger Bank South Wake Impacts) as a standalone document at Deadline 5 (REP5-070).

10. The following section summarises the Projco IPs' position as captured throughout the submissions noted above (both submitted historically to this Examination and within the documents provided for Deadline 5).

POSITION SUMMARY

11. Whilst there has been extensive debate over the wake loss issue, the Projco IPs' position is that there is an adverse effect on DBA, DBB and DBC which policy directs attracts substantial weight in the decision-making process and which is far more significant than the impact on Awel y Mor where the Secretary of State considered mitigation necessary. The Applicant's position is that there is no mitigation that can be imposed now, and so applying the mitigation hierarchy this only leaves compensation as a means of addressing this issue.

12. Given the significance of the adverse impact, the Projcos have presented a set of protective provisions which:

    a. allow for a wake loss assessment in the future, when the design of the Projects is finalised (allowing for greater certainty on the inputs to the modelling) and which allow for (but do not oblige) mitigation measures to be taken into account in that wake loss assessment. This provides design control to the Applicant, whilst acknowledging that there may be a significant amount of time between now and the point of assessment within which mitigation measures may become available; and

    b. provide a mechanism for quantifying compensation. The Applicant has not provided any means of addressing this adverse effect.

13. As a matter of law, based on submissions to date the Projco IPs understand that the Applicant and the Projco IPs are agreed that the draft Order could include protective provisions and could include compensation to address this matter. Where the Projco IPs and the Applicant are not agreed is whether these protective provisions are justified.

14. Therefore, we request that the protective provisions submitted at Deadline 5 are included in the draft DCO. This is the Projco IP's position on both the basis of its assessment of wake loss on DBA, DBB and DBC and the Applicant's assessment of wake loss on DBA, DBB and DBC. The Projco IP's position is set out in its previous submissions and reiterated in this submission.

ENGAGEMENT

15. The onus of engagement under the NPSs (and the draft NPSs) is with the Applicant. It is not with the Projco IPs.

16. The Applicant sought to criticise the Projco IPs for not engaging with the Applicant. This is completely without basis given that the onus of such engagement is with the Applicant and the Projco IPs have demonstrated a desire to engage on wake loss throughout pre-application and examination. The Projco IPs have been forced to address this issue through the DCO examination process as opposed to through engagement.

17. The Applicant acknowledged that the Projco IPs have sought to engage on wake loss in response to statutory consultation and following draft documents being shared with the Projco IPs. The Applicant acknowledged that in spite of the request for engagement from the Projco IPs, there had been no such engagement from the Applicant.

18. As has been clear throughout this examination, the Projco IPs have sought to engage, have presented full submissions at every deadline and have attended every ISH. As has also been clear throughout this examination, the Projco IPs cannot compel the Applicant to engage with them.

19. The Applicant has also accused the Projco IPs of "opportunistic interpretation". As has been made clear throughout the examination and was reiterated at ISH6, the Projco IPs raised this issue in response to pre-application consultation (in August 2023 and in advance of the Awel y Mor decision) and the Projco IPs have consistently raised this issue since then applying a consistent interpretation of the policy which later proved to be consistent with the sole decision to date where representations were received in relation to wake loss and relevant policy. The Projco IP's position is also consistent with other developers such as Orsted.

POLICY – DIRECTION OF TRAVEL

20. The reason for the proposed policy in draft NPS EN-3, which provides clarity and more specific policy as opposed to new policy, is threefold:

    a. this is now recognised as a material issue in planning, due simply to the increase in the number of offshore wind farms in GB waters;

    b. an improved understanding of wake on other offshore wind farms; and

    c. project promoters have sought to avoid undertaking an assessment of wake loss impacts in spite of the existing policy and in spite of precedent as is the matter in this case.

21. It is important to note that it was not until after 1) the Projco IPs had raised this, 2) the Awel y Mor decision and 3) the Clean Power 2030 Action Plan that the Applicant reversed its position on wake loss and sought to argue that wake loss was not a relevant consideration. In terms of an "*opportunistic interpretation*", this is arguably more opportunistic as it was at this point that other developers had sought to challenge the Awel y Mor position.

22. In spite of the Applicant's Deadline 5 submissions, the emerging NPS EN-3 should finally close the Applicant's arguments that: 1) wake loss effectively starts and ends at consideration of the grant of the TCE licensing and the imposition of the TCE buffer; and 2) wake loss is not a planning or an environmental consideration.

23. The Secretary of State has subsequently given a further indication of his views on the current (and emerging) policy through the post-examination consultation that has been issued in respect of the Mona Offshore Wind Farm. At Paragraph 3 of that consultation letter the Secretary of State notes the policy in 2.8.197 and 2.8.200 of NPS EN-3, and at Paragraph 4 of that letter the Secretary of State makes the following request:

    "*The Secretary of State requests that the Applicant provide, without prejudice, a proposal to secure:*

    a. the provision of an assessment (if the assessment contained in the Wood Thilsted Report is not agreed); and

    b. *further consideration of means to minimise any assessed impacts, including opportunities to work with impacted windfarms to achieve this*".

24. There is nothing in the period since the Projco IPs first raised this matter with the Applicant that has indicated anything other than support for the Projco IPs consistent position.

'NEARBY' AND TCE

25. It is worth restating at the outset that TCE's leasing process for Round 4 commenced in advance of the more substantial industry knowledge on intra-farm wake loss and this position has continued to evolve significantly after the closure of TCE's leasing round and the fixing of a 7.5km buffer.

26. The Applicant's continued reference to seabed licensing and the 7.5km buffer continues to be a red-herring in policy terms. As TCE has explained to this examination (Information Memorandum – Doc

Ref REP3-038), the 7.5km distance is a buffer, which provides that a project may not be constructed within such an area **without the written consent of the existing provider**. This is important in the analysis of the policy, as this provides absolute control to the existing operator within that buffer.

27. The policy in EN-3 would not be required at all if the Applicant's interpretation were the correct interpretation, because written consent of the existing operator would always be required and a project could not proceed without that consent. Therefore, it is inherent within the policy that the term nearby extends beyond 7.5km.

28. This is made clear by reference to the fact that the draft provides that an applicant may choose (but is not obliged) to put in place a compensation agreement in respect of wake. That may be correct for projects outside of the 7.5km buffer, but it could not be correct for projects within the 7.5km buffer given that the written consent of the existing operator is required. Within the 7.5km buffer, an applicant would not be the party with that control.

29. Put shortly, the Applicant's position cannot be correct.

30. The same applies to the current policy in respect of "close", which has substantially the same meaning as nearby and which the same considerations apply to.

31. This is particularly important in this case, given that the distance of DBA is 8km (just 500m from the buffer area within which no development could proceed without DBA's written consent). Effectively, in this Application the Projects are almost as close as they can be (within the framework of the TCE process) and so within the policy framework they are close and nearby. Put another way, if DBA is not close and is not nearby then on the Applicant's interpretation no offshore wind farm ever will be and there would be no need for the policy.

32. This flawed approach to nearby and close has also led to a failure to fully and properly assess both DBB and DBC.

33. This flawed interpretation pervades the Applicant's approach to EIA matters and planning matters as well, and has always been the fundamental flaw in their analysis because the TCE seabed licensing process is a separate process.

34. In the context of this Application, as the Projco IPs became aware of the scale of the impact they sought to engage with the Applicant and it has been the Applicant who has refused to engage.

LIKELY EFFECT ON FUTURE VIABILITY

35. The Wake Loss Assessment Report submitted by the Projco IPs (REP5-070) identifies the reduction in expected energy production across DBA, DBB and DBC to be approximately 364 GWh and 10,698 GWh on an annual and lifetime basis, respectively.

36. The financial impact of the wake losses at DBA, DBB and DBC are significant. In indicative financial terms, and considering undiscounted 2025 CfD power prices, the Projco IPs expect the impact across DBA, DBB and DBC to be approximately £20m and £582m on an annual and lifetime basis. In terms of financial impact, it is also important to note that:

    a. the projects were awarded CfDs in AR3 which at the time was the most competitive auction round due, in part, to the capacity cap applied to the auction by the government. The strike prices were the cheapest for offshore wind to that point; the next round resulted in slightly lower Strike Prices but the only subsequent round which attracted any bids from industry was AR6 in which the winning Strike Prices were materially higher, i.e. seeing an increase in the price of offshore wind; and

b. the CfD contract covers a period of 15 years, after which the financial position becomes less certain.

37. A loss in the region of £582 million across the operational lifetime is demonstrably significant. Such a loss, exceeding half a billion pounds over the life of the projects, is material, and the Projco IPs note the potential for these values to be even higher if DES-NZ wholesale electricity prices come to pass as outlined in Section 4.3 of the Wake Loss Assessment Report. It should be noted that the scale of financial impact at the level outlined in the Projco IPs' Wake Loss Assessment Report is clearly of material concern and, notwithstanding the fundamental concerns over the Applicant's assessment (REP4-099) that the Projcos have detailed in their Deadline 5 submissions, would remain such even if the Applicants' wake loss percentages were valid. In either case, these represent a significant economic loss to the Projcos' assets. Consequently, it is vital that opportunities for mitigation, including compensation, are secured.

38. As explained in the Wake Loss Assessment Report, the figures identified in paragraphs 36 to 37 above are considered conservative as they do not consider electricity prices post-CfD. When the financial impact of the wake losses at DBA, DBB and DBC is based on the Strike Prices during the CfD period and thereafter on wholesale prices as forecast by DESNZ[1] then the financial losses are estimated to be an average of £27million on an annual basis and £780million on a lifetime basis.

39. The scale of this loss (even on the Applicant's assessment) in respect of GWh and financial impact is significantly greater than the scale of loss identified in the Awel y Mor case where mitigation was identified as being necessary by the Secretary of State, and as far as the Projco IPs are aware is of a significantly greater scale than the loss that has been identified by other offshore wind operators in the other examinations that are currently proceeding.

40. The loss of revenue, if unmitigated, is likely to represent a material risk to the future commercial viability of DBA, DBB and DBC.

41. Paragraph 2.8.347 of EN-3 provides that where a proposed development is likely to affect the future viability of a scheme then the Secretary of State should give such adverse effects substantial weight in its decision-making. The test is whether such future viability is likely to be affected in a significant manner. The Projco IPs position is that losses at the scale identified represent a material risk to the future viability of the projects.

42. With respect to the policy test set in NPS EN-3 para 2.8.347, the Projco IPs have presented evidence that clearly demonstrates that the financial impacts are likely to be in excess of half a billion pounds and the Projco IPs position is that this represents a material risk to the future viability of DBA, DBB and DBC.

43. Paragraph 2.8.347 of EN-3 does not require that the Projco IPs demonstrate that DBA, DBB or DBC are unviable, and does not require that a full viability assessment is submitted to the examination. It requires that the Project is likely to affect future viability. The Projco IPs consider that the information provided provides sufficient information to the ExA and the Secretary of State to reach a reasoned conclusion on the likelihood of affect to future viability. At ISH6, the Applicant raised a comparison to an affordable housing viability assessment (which would accompany a planning application for housing development and would seek to demonstrate that the levels of affordable housing proposed are policy-compliant) but that is not a relevant comparison for this policy because: 1) the first purpose of such an assessment is to demonstrate actual viability at a specific point in time (the submission of the planning application); 2) the second purpose is to effectively reduce the level of affordable housing

[1] DESNZ Energy and emissions projections: 2023 to 2050 - Annex M: Growth assumptions and prices https://www.gov.uk/government/publications/energy-and-emissions-projections-2023-to-2050

from a policy compliant level to a non-policy compliant level in order for development to come forward, without which the development would likely be refused. By comparison, the policy test in this case is concerned with likely impact on future viability rather than actual viability at the point of application submission. Put simply, it is comparing apples with oranges, as it is looking at viability in a completely different context.

44. The reason to prefer the Projco IPs assessment and conclusions from a financial perspective is that it is the Projco IP's assessment, applied to its own understanding of its own yield on the projects and which has informed its financial decisions on those projects. It wouldn't be appropriate for the Applicant to have the final word on significance of impact, as the Applicant will not have the full commercial understanding of the Projco IP's yield, as many of the factors that determine yield are confidential and known only to the Projcos.

45. The Projcos' form of protective provisions present the most appropriate method to resolve the Projco IPs' outstanding concerns. Firstly, they allow for later reassessment of wake loss, accounting for final design and providing the opportunity to explore and account for any further mitigation that the Applicants may adopt. These protective provisions further then allow for the payment of sums for any remaining financial loss which cannot be mitigated through other measures. Finally, the proposed protective provisions allow for arbitration to account for the fact that differences may exist between the Applicants and the Projcos' positions, including in the modelling itself as well as in the subsequent determination of the residual financial impact. These protective provisions are necessary to address the impacts at the time that they occur, rather than basing them on outline information at this stage.

46. It is also important to note that the economics of offshore wind farms are generally in a precarious position, as recent developments with Orsted and their withdrawal of Hornsea Four demonstrates[2], and so it is likely that a substantial loss such as that caused to DBA, DBB and DBC by the Projects would have an impact on future viability.

47. There are a number of ways in which a material risk could arise as a consequence of such a significant loss in revenue and annual cashflow to a project. For example: the risk of defaulting on loans due to the reduction in cashflow, which could throw the future operation of the project into doubt; the risk of impact on shareholder confidence with the potential withdrawal of shareholders; the risk to future investment in any lifetime extension; risk to operational costs, including as a result of the structure of contracts. DBA, DBB and DBC are being delivered and operated as three phases operating together, so one terminating early would have material, adverse commercial effects on the other phases, and so would have a knock-on effect. That is why the Projco IP's are treating them together as a whole for assessment. It is too simplistic to simply analyse DBA, DBB and DBC separately, and if the Applicant had engaged with the Projco IPs to understand the structure of the projects and the underlying contracts (including operation and maintenance contracts) this would be understood.

48. NPS EN-3 Para 2.8.28 it states:

> "*Available wind resource is critical to the economics of a proposed offshore wind farm*."

49. Just because the Applicant seeks to characterise the effect on the wind resource as objectively low in percentage terms, it should not be assumed that the economic consequence is similarly low, and the Applicant has not undertaken any analysis to understand the economic loss to the Projco IPs in respect of DBA, DBB or DBC. As with the Wake Loss Assessment itself, the Projco IP's evidence should be preferred on economic matters as the Projco IPs have an understanding of the economic matters.

[2] https://orsted.com/en/company-announcement-list/2025/05/orsted-to-discontinue-the-hornsea-4-offshore-wind--143901911?pk_vid=66afa0c87f69cacf17495687270576ec

Without Prejudice Position

50. Whilst the Projco IPs are willing to continue to engage on the modelling approaches taken by each party, there are a number of fundamental areas of disagreement on the modelling approach which are unlikely to be resolved during the course of the examination. It is for this reason that the Projco IPs' preferred protective provisions should be included within the DCO, as they provide a secured mechanism by which a modelling approach can be agreed in future (via an independent expert if necessary) based on the final design of the Project and the technological baseline at the time.

51. Without prejudice to the position that the decision should be based on the Projco IP's Wake Loss Assessment and the likely level of economic loss identified above, the Projco IPs consider that it would be helpful to the examination to present the likely level of economic loss based on the percentage of wake loss identified in the Applicant's Addendum (AS-179).

52. Based on the Applicant's Addendum, the loss of annual energy production to DBA, DBB and DBC would be:

    a. 48 GWh on an annual basis; and

    b. 4,310 GWh on a lifetime basis.

53. Based on the Applicant's Addendum, the range of financial loss to DBA, DBB and DBC would be:

    a. in a conservative situation based on the CfD price for the full lifetime of DBA, DBB and DBC, £8million on an annual basis and £233million on a lifetime basis; and

    b. in a situation based on the Strike Prices during the CfD period and thereafter on wholesale prices as forecast by DESNZ[3], an average of £11million on an annual basis and £314million on a lifetime basis.

54. This demonstrates that even if the Secretary of State were to base its decision on the impacts of the Projects on DBA, DBB and DBC on the Applicant's assessment (AS-179) those impacts are significant, and lead to an adverse effect on DBA, DBB and DBC. The Projco IP's position is that this level of loss of revenue, if unmitigated, is likely to represent a material risk to the future commercial viability of DBA, DBB and DBC and its position set out in paragraphs 35 to 50 above applies to that level of loss too.

55. The scale of this loss (even on the Applicant's assessment) in respect of GWh and financial impact is significantly greater than the scale of loss identified in the Awel y Mor case where mitigation was identified as being necessary by the Secretary of State, and as far as the Projco IPs are aware is of a significantly greater scale than the loss that has been identified by other offshore wind operators from one project in the other examinations that are currently proceeding.

56. The impact on energy production set out in paragraph 52 is calculated by taking an average from the output of the TurbOPark + Correction and the VV3.4 models provided by the Applicants, and excluding the EV DAWM model as the Applicant has noted itself that the EV DAWM "*performance worsens the further wakes travel*" and "*EV DAWM is a less appropriate model to use for the farms assessed here*".

PROTECTIVE PROVISIONS

57. The only forms of protective provisions in front of this examination are those submitted by the Projco IPs and the Orsted IPs.

[3] DESNZ Energy and emissions projections: 2023 to 2050 - Annex M: Growth assumptions and prices https://www.gov.uk/government/publications/energy-and-emissions-projections-2023-to-2050

58. The Applicants accept that protective provisions addressing this matter can, as a matter of principle, be included in the DCO.

59. The Applicants accept that the tests in 4.1.16 of EN-1 do not strictly apply to the protective provisions, although for good measure the Projco IPs have considered these in the drafting of the protective provisions.

60. The Projco IPs position is that the form of requirement included in the Awel y Mor DCO is not the preferred outcome. In this respect, there is agreement with the Applicant.

61. Therefore, careful consideration has been given to a form of protective provisions that would be appropriate to address the necessary mitigation and compensation in a manner that is both precise and enforceable. The Applicant's concerns around precision and enforceability, expressed in its D5 submission and response to the ExA's questions, do not arise in the context of the protective provisions which have been submitted by the Projco IPs.

62. The Applicant's fundamental argument on reasonableness appears to be that it is unfair to introduce this concept in a mature industry where the interpretation of the NPSs is contested (see response to IOU.2.10 and IOU2.20). This position is not accepted by the Projco IPs, as:

    a. the Projco IPs have raised the need for consideration of wake throughout the pre-application stage of this specific application;

    b. until the opening of this examination, the Applicant had indicated that it would engage with the Projco IPs in respect of wake loss;

    c. the need for this to be considered has been raised consistently throughout this examination by both the ExA and interested parties;

    d. the Applicants have elected to disregard wake in this process, taking the position (until Deadline 4) that it was not relevant and that no materials would be submitted by it on wake loss. It has only now assessed the impacts on DBB or DBC, and it has not engaged with the Projco IPs (although we note that there have now been requests for meetings and the Projco IPs will progress this);

    e. there has been precedent, which the Applicant has chosen to disregard and chosen to contest throughout this examination; and

    f. most fundamentally, and without reiterating its case on policy which has been set out in this examination, the Projco IPs position (supported by the ever-increasing evidence) is that there is a policy requirement to address this issue under the NPSs and that policy requirement has not been discharged).

63. The Applicant has elected, at its own risk, to adopt the position that the NPSs do not apply and that wake loss is not a planning or environmental matter. Taking that position notwithstanding precedent, on the basis that it contests the policy position, is not a justification to oppose mitigation as being unreasonable.

64. In terms of the compensatory element:

    a. the Applicant appears to accept that compensation forms part of the mitigation hierarchy within the NPSs in their D5 submission (Deadline 5 response to IOU.2.8); and

    b. the Applicant accepts, as a matter of law and principle, that compensation can be included in protective provisions (Deadline 5 response to IOU.2.10). As previously identified by the Projco

IPs, the draft DCO already includes an indemnity in respect of loss of revenue to another party which is less precise in its operation than the drafting recommended by the Projco IPs).

65. The Applicant does rely on the Awel y Mor decision for its resistance to the inclusion of compensation. However, in that case the affected party was seeking indemnification and the reason that the indemnity provisions were not included in the Awel y Mor DCO was not a matter of policy or principle but a matter of imprecise drafting by the party seeking the indemnity. The ExA in that case considered that the proposed requirement was vague and so would fail to meet the tests of enforceability and precision (the ExA did not conclude that it would not meet the tests of necessity and reasonableness) (see Paragraph 5.14.83 of the Awel y Mor Recommendation Report). The Secretary of State was silent on this in the decision letter and adopted the drafting proposed by the ExA.

66. In this instance, where the necessity for such a provision is even greater, detailed protective provisions which are not vague and which are not imprecise have been drafted. The protective provisions provide a clear process for assessment and quantification (if required), as opposed to Awel y Mor where there was a more simple request for indemnification. The protective provisions have also been prepared during the examination process and all parties have been afforded the opportunity to consider and comment on those protective provisions.

67. In terms of emerging policy, draft NPS EN-3 does not state conclusively that compensation is not an appropriate measure and can never be secured in respect of wake loss matters. It states that there is no expectation that inter-project compensation arrangements are a necessary means to mitigate the impact of wake effects (and follows on, through linkage, from a general policy expectation that there will be engagement by an applicant throughout as well as consideration of mitigation measures). That is a general policy statement, but it does mean that there may be circumstances where such compensation arrangements are a necessary means to mitigate the impact of wake effects. The current NPS EN-3 is silent on this matter. This is a draft policy which is subject to consultation responses on this point. The Projco IP's position is that this does not support an argument that compensation should not be imposed in the final Order for the Projects.

68. We note the Applicant's comment in response to ExQ2 IOU2.10 that: "*The Applicant note the firm way in which the SoS rejects inter-project compensation in the draft NPS revisions, which is consistent with the stance of the previous SoS in Awel y Mor*". This is not a proper characterisation of the draft NPS or the Awel y Mor decision. As noted above, the draft NPS (which is subject to consultation on this point) notes that there is no expectation that inter-project compensation agreements are necessary but this is in the context of compliance with the remainder of the policy and means that there may be circumstances where such agreements are necessary. As also noted above, the previous Secretary of State did not address compensation in its decision on Awel y Mor but adopted the ExA's drafting which was based on an indemnity (in a requirement where the six policy tests apply) which was considered to be vague and imprecise.

69. In this case, the Projco IPs have demonstrated the scale of the impact and demonstrated why it is necessary for compensation arrangements to be secured in the protective provisions.

70. This is necessary to balance the substantial weight that should be afforded to the adverse effects on DBA, DBB and DBC.

71. The Projco IPs consider that the protective provisions submitted allow for consent to be granted in spite of policy non-compliance.

72. In the absence of an alternative proposal, we request that the ExA proceeds to include the proposed protective provisions in the draft DCO.

73. The Projco IPs would welcome engagement from the Applicant on this matter, and consider that this can progress outside of this hearing and in advance of the close of the examination so that agreement can be reached on a form of protective provisions.

74. Given the questions raised by the Secretary of State on the post-recommendation stage of the Mona Offshore Wind Farm, we would expect this to be something that the Secretary of State would consult on if not addressed through the examination.

DESIGN AND MITIGATION

75. The Applicant has stated in its D5 submissions that it has considered mitigation. However, this mitigation has been considered post-submission of the Application and was introduced to the examination at Deadline 4, as opposed to being considered in the design evolution of the Project.

76. The approach set out in the protective provisions does not oblige further design or mitigation measures, but allows for further design or mitigation measures to be taken into account at the point at which a wake loss assessment is undertaken by the Applicant once it has its final design of the Project. This is in recognition that: 1) the Project is based on a Rochdale Envelope approach, and the future design evolution may lead to a reduction in impacts which can be assessed at the point of design; and 2) measures may emerge which do allow for a reduction in impacts.

77. This will allow the Applicant the opportunity to consider its approach to mitigation and compensation, and balance potential design mitigation measures against financial compensation notwithstanding the Applicant's current position on design mitigation. In particular, measures such as wake control may develop in the interim period.

78. In terms of the mitigation measures that have been explored, only one relates to a project specific assessment in this case (the layout modification at 7.4). This does appear to mitigate wake losses, albeit by a small amount, and in terms of reasonableness it is not clear how this fails the Applicant's criteria 1 or why it is discounted for criteria 2.

79. One mitigation measure that was raised at the previous ISH3 on wake loss was a reduction in turbine/hub height, but this is not addressed in the document. In addition, as noted before project specific assessments have not always been considered (as seen by the Awel y Mor and Gwynt y Mor example in respect of buffering and where the impacts on those two projects are presented on a table which has no scale to allow for an understanding of the impacts). The evidence was previously provided that this was disproportionate due to the impacts being at a ratio of 50:1 – that is not clear from the table provided.

80. The Applicant has considered all mitigation in isolation but a combination of mitigation measures does not appear to have been considered. This could include a buffer and wake steering. The primary purpose of wake steering is to reduce internal wake losses, but the Applicant has not considered using wake steering in conjunction with an additional buffer, which together could in principle mitigate any reductions within DBS while mitigating on DBA, DBB and DBC.

81. In terms of mitigation, there is a concept of "net positive" (which is actually expressed as being no significant harm to the net generated renewable energy) that has been adopted in assessing whether mitigation is reasonable. This builds on a position that was set out by the Applicants at the previous ISH3 that the mitigation should be neutral on the Applicant's project and deliver a reduction in impacts (i.e. a benefit to) the affected parties. In a number of cases, mitigation is discounted on the basis that there is no net positive. However, this does not take account of the general mitigation hierarchy or the policy position to mitigate impacts generally, **and there is no basis at law for mitigation to be neutral to the project causing the harm in order for it to be accepted**. This is compounded by the fact that

the document does not, in a number of cases, identify what the impacts would be to the Applicant's Projects to allow an objective understanding of the net effect. The Projco IPs position remains that there is a substantial adverse effect on DBA, DBB and DBC that requires mitigation.

82. If there is, as the Applicant asserts, no mitigation then that leaves compensation.

MEETING WITH THE APPLICANT (ACTION POINT 2)

83. The meeting with the Applicant on Tuesday 10 June 2025 was focussed on technical points. It was productive and there were actions for both the Applicant and the Projco IPs following the meeting. However, there remain a number of fundamental areas of disagreement on technical modelling points which are unlikely to be resolved during the course of the examination, although the Projco IPs are committed to continue engaging with the Applicant on these.

84. The protective provisions were not discussed at the meeting with the Applicant.

UPDATED PROJCO WAKE ASSESSMENT (ACTION POINT 3)

85. The Projco IPs note the ExA's request at ISH6 Action Point 3 for an updated wake loss assessment inclusive of wake effects from the Hornsea projects. The Projco IPs are preparing this, however, due to the time needed to gather and agree inputs, and run the TurbOPark model, it has not been possible to submit this at Deadline 6. The Projco IPs will submit this to the ExA as soon as it is available ahead of Deadline 7, noting that it will be at the ExA's discretion whether to accept this outside of a set deadline.

APPENDIX 1

PROJCOS' RESPONSES TO EXAMINING AUTHORITY'S RULE 17 LETTER

Question	Projcos' Responses
R17.23	*Do you agree with the applicants' statement in paragraph 66 of [REP4-099] that if any wake mitigation was to be applied to the proposed development, it must also be "reasonable", and do you agree with the criteria for reasonableness regarding mitigation which the applicants set out under table 4?* Mitigation must be considered if it is reasonably possible to avoid or reduce an adverse effect. Net Positive In terms of REP4-099, there is a concept of "net positive" (which is actually expressed as being no significant harm to the net generated renewable energy) that has been adopted in assessing whether mitigation is reasonable. This builds on a position that was set out by the Applicants at the previous ISH3 that the mitigation should be neutral on the Applicant's project and deliver a reduction in impacts (i.e. a benefit to) the affected parties. Based on comments at ISH3 and ISH6, the Applicant appears to base this concept of "net positive" on the policy requirement to maximise annual generating capacity. However, the obligation to maximise generating capacity is not absolute. NPS EN-3 identifies this objective and refers to it as follows: 2.8.2 "*To meet its objectives government considers that all offshore wind developments are likely to need to maximise their capacity within the technological, environmental, and other constraints of the development*". 2.8.5 "*project developers should seek to maximise their capacity within the technological, environmental, and other constraints of the project*". This demonstrates that the obligation to maximise capacity is subject to, and does not override, the constraints of the Projects. It does not support the position that there must be a net positive or a neutral impact on generating capacity, but supports that the maximisation of generating capacity of the Projects is subject to the environmental and other constraints of the Projects. In this case, the adverse effect on DBA, DBB and DBC is a constraint of the Projects. Therefore, the maximisation of the generating capacity does not override this impact. In a number of cases, mitigation is discounted on the basis that there is no net positive. However, this does not take account of the general mitigation hierarchy or the policy position to mitigate impacts generally, and there is no basis at law for mitigation to be neutral to the project causing the harm in order for it to be accepted. This is compounded by the fact that the document does not, in a number of cases, identify what the impacts would be to the Applicant's Projects to allow an objective understanding of

	the net effect. The Projco IPs position remains that there is a substantial adverse effect on DBA, DBB and DBC that requires mitigation.
R17.24	*Do you consider that there are any additional wake loss mitigation measures which the applicants should consider other than those set out in table 5 of [REP4-099]?* At ISH6, the Projco IPs identified that one mitigation measure that was raised at the previous ISH3 on wake loss (but which is not addressed in REP4-099) was a reduction in turbine/hub height. The Applicant did not respond to this point. At ISH6, the Projco IPs also identified that the Applicant has appeared to consider all mitigation measures in isolation but that a combination of mitigation measures does not appear to have been considered. The Projco IPs identified that this could include a buffer between the Projects and DBA, DBB and DBC with wake steering. The primary purpose of wake steering is to reduce internal wake losses, but the Applicant has not considered using wake steering in conjunction with an additional buffer, which together could in principle mitigate any reductions within DBS while mitigating on DBA, DBB and DBC. Please see the Projco IPs response to question R17.29 for further information.
R17.25	The Projco IPs reserve their right to comment on any response to this question.
R17.26	The Projco IPs reserve their right to comment on any response to this question.
R17.27	The Projco IPs reserve their right to comment on any response to this question.
R17.28	The Projco IPs reserve their right to comment on any response to this question.
R17.29	*Provide a comprehensive view on the mitigation measures set out in section 7 of 'Wake Effects - Response to Issue Specific Hearing 3 (ISH3) Action Points' [REP4-099]. Do you consider the findings to be reliable - why or why not?* As a general comment, the Projco IPs recognise that such an assessment at this time would be based only on the potential turbines included within the Applicant's envelope but this would be informative in demonstrating if mitigation should be further considered later as allowed for in the Procjo IP's draft protective provisions. This could then be considered with the actual layouts applicable for the final turbines (based on the actual turbines used) noting that the degree to which layouts can be modified will be somewhat dependent on the size of the final selected turbines (noting for example other restrictions around minimum turbine spacing). This is reflected in the different effects which arise from the use of a greater number of small turbines versus a fewer number of large turbines. <u>7.3: Buffer</u> Project specific assessments have not been considered, and even on the Applicant's methodology there is no statement which identifies: 1) the level of mitigation that this would provide to DBA, DBB or DBC; or 2) the impact to the total energy generating capacity of the Projects. As such, it is not possible to review the effectiveness of buffer distance as a mitigation measure against the Applicant's criteria 1 and 2.

	In addition, evidence was previously provided that this was disproportionate due to the impacts being at a ratio of 50:1: that is not clear from Figure 4, which does not relate to Dogger Bank and is not scaled to demonstrate impacts. 7.4: Layout Modification Whilst the applicants have provided a site-specific assessment for layout modification, details allowing the appraisal of this mitigation are omitted. The nature of the layout modifications considered at DBS West and the wake models used to assess the level of mitigation provided to DBA are not specified. On the Applicant's methodology there is no statement which identifies the impact on total energy generating capacity at DBS West and it is unclear why layout modification is discounted for criteria 2. In addition, this does not consider DBS East and this does not consider the impacts on DBB or DBC. 7.5: Reduced Size and Capacity This only considers one alternative layout, and with a reduction to the scale of 50% on DBS it is not considered to be a genuine attempt at mitigation by the Applicant given its adopted methodology as it would necessarily fail its own mitigation test. Therefore, the Applicant's starting point is considered to be disproportionate and unrealistic and a more proportionate layout adjustment should be considered. 7.6: Wake Control Wake steering has not been modelled on a project specific level and could be available for projects that are operational from 2029. Therefore, we do not consider that this has been considered in appropriate detail and we do not agree with the reasons for discounting this at this stage. On the Applicant's methodology there is no statement which identifies: 1) the reduction to the total energy generating capacity; or 2) the level of mitigation that this would provide to DBA, DBB or DBC. 7.7: Wake Re-energisation Wake reenergisation has not been modelled on a project specific level. On the Applicant's methodology there is no statement which identifies: 1) the reduction to the generating capacity; or 2) the level of mitigation that this would provide to DBA, DBB or DBC. 7.9: Historic Example This example does not demonstrate the implausibility of mitigations as a whole as is stated. Nor does the example presented preclude the Applicant from assessing a layout modification where perimeter density is reduced (it is not clear whether this has been considered in this assessment).
R17.30	The Projco IPs reserve their right to comment on any response to this question.
R17.31	The Projco IPs reserve their right to comment on any response to this question.

APPENDIX 2

PROJCOS' COMMENTS ON THE APPLICANT'S RESPONSES TO EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS

Question	Projcos' Comments on the Applicant's Response
IOU.2.3 2025 Revisions to NPS	As they identify in their response to this question, the Applicants have consistently argued that there were special considerations regarding wake effects that apply as between offshore wind farms and that this is not a planning matter. The Applicants fairly acknowledge in their response that the Secretary of State is not taking the approach in draft EN-3 in spite of the fact that this has been argued for. The Applicants fairly acknowledge that this is in spite of lobbying to persuade DES-NZ that wake loss is not a planning matter. The Projco IPs' position is clear, and is reflected in the draft NPS documentation itself. The policy is not introducing wake loss as a matter to be assessed; it is providing "greater clarity". The documents states, in respect of wake, that: "*The aim of these inclusions is to provide **greater clarity** on how applicants can consider and potentially mitigate the impact of inter-array wake effects between new developments and nearby consented and operational wind farms, and how they could demonstrate their efforts to manage those effect*". The Applicant's response correctly acknowledges that it is for the Secretary of State to determine the weight to be afforded. We would expect NPS EN-3 to be in place when the application is determined, and it will be an important consideration. In terms of the policy, this is expected to evolve and representations have been submitted to the Secretary of State in respect of the form and content of the policy. For example, a number of consultation responses have responded identifying that NPS EN-3 Para 2.8.233 should be removed in its entirety. The Applicant's position that the draft NPS EN-3 only applies to future seabed licensing rounds is not correct and this is not stated in the draft NPSs. The draft NPS EN-3 will (once adopted) apply to any application for an offshore wind farm which comes forward. There are projects from previous leasing rounds, such as Dogger Bank D, which are likely to come forward with the new policy framework in place and if, for whatever reason, an application for a current Round 4 project was withdrawn or refused and re-submitted then, if draft NPS EN-3 had been adopted before that application was submitted, this would apply to that project. <u>Clean Power Action Plan 2030</u> The Clean Power Action Plan 2030 is not neutral for this Application or for the approach to policy. It is itself a material consideration now. It recognises Awel y Mor as a precedent and identifies the significance of wake as an issue. It is particularly important in the context of this Application and the approach that has been taken on wake, as it was not until after the Clean Power Action Plan 2030 (in December 2024) had been issued that the Applicant reversed its position in respect of wake and sought to remove it from the Application. The Projco IPs agree that the Clean Power Action Plan 2030 supports the deployment of new offshore wind. However, it is important to note that of the adverse effects to be

	addressed by developers wake loss is specifically identified as a key issue within this document. The Applicant would have been aware of this when it adopted its position. Other Decisions Beyond this, the Applicant refers (in a number of instances) to the need to await decisions. There is no such need. The previous Secretary of State confirmed its position in the Awel y Mor decision and the Secretary of State has issued a consultation in respect of the Mona Offshore Wind Farm which (again) demonstrates its view that paragraphs 2.8.197 and 2.8.200 of the National Policy Statement (NPS) for renewable energy infrastructure (NPS EN-3) do apply.
IOU.2.4	The Applicant's continued reference to seabed licensing and the 7.5km buffer continues to be a red-herring in policy terms. As TCE has explained to this examination (Information Memorandum – Doc Ref REP3-038), the 7.5km distance is a buffer, which provides that a project may not be constructed within such an area without the written consent of the existing provider. This is important in the analysis of the policy, as this provides absolute control to the existing operator within that buffer. The policy in EN-3 would not be required at all if the Applicant's interpretation were the correct interpretation, because written consent of the existing operator would always be required and a project could not proceed without that consent. In short, the project would fail for reasons outside of the planning system. Therefore, it is inherent within the policy that the term nearby extends beyond 7.5km. This is made clear by reference to the fact that an applicant may choose (but is not obliged) to put in place a compensation agreement in respect of wake. That may be correct for projects outside of the 7.5km buffer, but it could not be correct for projects within the 7.5km buffer given that the written consent of the existing operator is required. Within the 7.5km buffer, an applicant would not be the party with that control. Put shortly, the Applicant's position cannot be correct. The same applies to the current policy in respect of "close", which has substantially the same meaning as nearby and which the same considerations apply to. This is particularly important in this case, given that the distance of DBA is 8km (just 500m from the buffer area within which no development could proceed without DBA's written consent). Effectively, in this Application the Projects are almost as close as they can be (within the framework of the TCE process) and so within the policy framework they are close and nearby. Put another way, if DBA is not close and is not nearby then no offshore wind farm ever will be and there would be no need for the policy. This flawed approach to nearby and close has also led to a failure to fully and properly assess both DBB and DBC, although we note that these projects will be assessed. This is also demonstrable by the Applicant's assessment in respect of Hornsea 4 set out in the Addendum and summarised at Paragraph 14, which shows that proximity alone is not the right metric to base an assessment on given that the impacts of Hornsea 4 on DBS is predicted to be greater than the impact of DBS on Hornsea 4.
IOU.2.5	There is an important principle in the wording of 2.8.176, which reflects the correct approach to project design:

	"*As with any new development, applicants should consider the impact of their proposal on other activities and make reasonable endeavours to address these*". The Projco IPs have previously identified that the correct approach to assessment is to agree a methodology at the pre-application stage. In this case, this could have been agreed through proper engagement but the Applicant opted to withdraw from such engagement. The Applicants position that: "*if wake assessments are to be required from applicants it will be necessary for guidance to be developed as regards the inputs, methods and models which are to be used and the inputs to be required from the promoters of affected projects*" is not justified. This is a matter that the Applicant was aware of at the pre-application stage, and in REP4-086 the Applicant stated that "*the Dogger Bank Projcos are better placed to assess wake impacts on their own projects than the Applicants. This is particularly the case because they will have a deep understanding of the wind conditions affecting their projects*". If the Applicant had engaged on this issue, as the Projco IPs had sought, then this matter could have been assessed and addressed and this would have resolved much of the debate throughout examination. This attempt to use a failure to consider a material matter, including engagement on a methodology, until Deadline 4 is not accepted by the Projco IPs. The fact that engagement on a methodology at the pre-application stage is an appropriate step and could have resolved this matter is emphasised by the fact that at ISH6 the Applicant only identified two substantive areas of difference between the Applicant's wake loss assessment and the Projco IP's wake loss assessment. The onus is on the Applicant to establish and apply methodologies (i.e. the framework) for the assessment, with the impacted party then providing the specific details to allow it to be refined.
IOU.2.6	The Applicant's response once again ignores the fact that there is a decision letter on this subject matter from the previous Secretary of State (Awel y Mor) and that there is recognition of that precedent from the current Secretary of State in the flagship energy policy document (Clean Power 2030 Action Plan). The Secretary of State has issued a consultation in respect of the Mona Offshore Wind Farm which demonstrates its view that paragraphs 2.8.197 and 2.8.200 of the National Policy Statement (NPS) for renewable energy infrastructure (NPS EN-3) do apply to wake loss matters. 2.8.198: This position is addressed above at IOU2.5 in respect of methodology. However, it is important to note that there are a number of impacts which must be assessed as part of an offshore wind application which are largely operational (for example collision impacts on seabirds and landscape and visual impacts) and there are also other areas which are assessed (such as the impact on oil and gas activities) where the Applicant's environmental statement considers all phases of the proposed development despite uncertainty around those other activities. 2.8.200: The Applicant has failed to follow normal practice at the pre-application stage and as reiterated by the Projco IPs throughout the examination has failed to comply with its own commitments.

IOU.2.7	See above. The NPSs will be a material consideration for Round 4 projects. If the Applicant's position were correct, the NPS could simply state that wake must be assessed within any TCE buffer but not outside any TCE buffer (they would not need to specifically refer to the Round 4 buffer). They do not do this. It is also important to note that the draft NPS does not apply to specific leasing rounds rather the timescale of the relevant project and when it seeks consent.
IOU.2.8	The mitigation hierarchy is relevant to all impacts and is a matter of good project design. Avoid, reduce, mitigate and compensate. In this context, the reference to the 7.5km buffer is once again a red-herring in terms of mitigation. This is an avoidance measure in the design of the Project, but is not a reduction or a mitigation measure. This is another area where too great an emphasis has been placed on this buffer by the Applicant, ignoring the fact that they are only 500m further away from this buffer in respect of DBA and still close in respect of DBB and DBC. The work that the Applicant has undertaken is welcome. However, that work has been undertaken and submitted during the examination of the Application (at Deadline 4) and applying the third stage of the mitigation hierarchy (mitigation) only. The work only applies to DBA, and does not apply to DBB and DBC which the Applicant has still not engaged with. The document identifies that there are mitigation measures which are in development and this was confirmed by the Applicant's evidence at the ISH. The DCO seeks a seven-year period for implementation, noting the scale of the development and the need for contracts for difference to be awarded. The protective provisions which the Projco IPs seek are, themselves, a form of mitigation. They do not oblige the Applicant to take further design and mitigation measures, but they allow for further design and mitigation measures to be taken into account in an updated wake assessment. This allows a way for the DCO to be granted, in spite of policy non-compliance, whilst providing protection and recognising the further measures that may be in place when the design is finalised (which could, realistically, be at least seven years from now). The Applicant does rely on Awel y Mor for its resistance to the inclusion of compensation. However, in that case the affected party was seeking indemnification and the reason that the indemnity provisions were not included in the Awel y Mor DCO was not a matter of policy or principle but a matter of imprecise drafting by the party seeking the indemnity. The ExA in that case considered that the proposed requirement was vague and so would fail to meet the tests of enforceability and precision (it did not conclude that it would not meet the tests of necessity and reasonableness): see Paragraph 5.14.83. The Secretary of State was silent on this in the decision letter, and adopted the drafting proposed by the ExA. In this instance, where the necessity for such a provision is even greater, detailed protective provisions which are not vague and which are not imprecise have been drafted. The protective provisions provide a clear process for assessment and

	quantification (if required), as opposed to Awel y Mor where there was a simple request for indemnification.
IOU.2.10	<u>Compensation</u> Adherence to the 7.5km buffer zone is not in itself a mitigation measure; the Applicants would have required a written consent from the DBA Projco were they to have infringed this boundary and they have not done so. The Applicant refers to the Projco IPs conduct over the last four years in proceeding with the projects as a justification for not securing compensation. However, throughout the development of the Project the Applicants have sought to engage with the Applicant and it is the Applicant who has refused to engage. The Projco IPs have proceeded with projects, on the basis that mitigation will be secured. The argument that there is knowledge of a risk and that the Applicant is aware of this again demonstrates only the failure of the Applicant. The opposite is equally true, and it is the risk that the Applicant has taken in choosing not to comply with policy and precedent and in adopting the position that DBA is not "close" or "nearby" which has led to the situation that it now finds itself in. The use of a free resource argument is a red-herring. There is a policy which applies and it is that which dictates what the Applicant must do. See above (specifically paras. 65-68 above) on the draft NPS and Awel y Mor in respect of compensation. However, we note the Applicant's comment that: "*The Applicant note the firm way in which the SoS rejects inter-project compensation in the draft NPS revisions, which is consistent with the stance of the previous SoS in Awel y Mor*". This is not a proper characterisation of the draft NPS or the Awel y Mor decision. As noted above, the draft NPS (which is subject to consultation on this point) notes that there is no expectation that inter-project compensation agreements are necessary but this is in the context of compliance with the remainder of the policy and means that there may be circumstances where such agreements are necessary. As also noted above, the previous Secretary of State did not address compensation in its decision on Awel y Mor but adopted the ExA's drafting which was based on an indemnity (in a requirement where the six policy tests apply) which was considered to be vague and imprecise. <u>EIA</u> In respect of the conclusion that the impact magnitude is negligible from an EIA perspective, there is no basis for this conclusion based on the EIA methodology (which is the only methodology in front of this examination for calculating such impacts and which is set out in the ES). When preparing their ES for submission, which did originally include wake loss, these methodologies were adopted as appropriate and no alternative methodology was adopted or proposed by specialist environmental consultants. The Projco IPs set out the detailed reasons why, when the ES methodology is properly applied, an impact would be significant at sections 27 to 34 of its Deadline 4 submission. The Applicant did not respond to or rebut the Projco IP's position at Deadline 5, but did set out its approach in REP4-099.

	In REP4-099, there is a fundamental failure to qualify the sensitivity appropriately because the sensitivity of the receptor is classified by reference to the effect that is then purported to be assessed (contrary to the worst-case conclusion that the sensitivity to change in Section 16.6.1.1.3 of Chapter 16 which concludes that the sensitivity of offshore wind is high). This is supported, in planning terms, by the Awel y Mor decision and the moderate negative weight afforded to a far less substantial interference with an offshore wind farm which would generate significantly less energy annually and over a shorter timeframe than for the impacts of the Projects on DBA, DBB and DBC. A conclusion that somehow less weight should be afforded to the impact on those projects is not justifiable.
IOU.2.11	<u>Planning</u> This does not require significant research; the Applicant helpfully set out all examinations where wake loss has been raised as an issue by affected projects, and as far as the Projco IPs are aware none of the evidence presented in those examinations identify an interference as significant as the interference identified by the Projco IPs in respect of DBA, DBB and DBC. This is relevant, particularly given the significantly greater impacts that the DB Projcos have identified in comparison with Awel y Mor in terms of the weight to be afforded to the impacts. The Projco IPs position, without prejudice to the position of other affected parties, is that the scale and duration of the impact on each of its projects represents a significant interference in planning terms that must be addressed. The Applicant continues to assert that the impact on DBA (and DBB and DBC) is not significant in planning terms. See section 6 and Para 18 of the Addendum. The Projco IPs set out (at Deadline 3 REP3-063 in response to IOU.1.11) in detail the reasons why, when the Awel y Mor decision is properly considered, the impacts would be more significant for DBA, DBB and DBC and why a pure % based assessment is not appropriate. The Applicant did not respond to or rebut the Projco IP's position at Deadline 4, and has continued to adopt a pure % based approach to impacts in its assessment. <u>Assessment Preference</u> The Applicant's position on wake loss and AEP reductions presented at the previous ISH was that the affected parties would be best placed to undertake an assessment. In REP4-086, the Applicants state that "*the Dogger Bank Projcos are better placed to assess wake impacts on their own projects than the Applicants. This is particularly the case because they will have a deep understanding of the wind conditions affecting their projects*". The Projco IP's position is that, consistent with the Applicant's submission, its analysis is to be preferred and the conclusion on the impacts should be based on the Applicant's documentation. However, the Projco IP's position remains that the onus for such assessment should sit with the Applicant following engagement with the Projco IPs at the pre-application stage and that the Applicant has not discharged its pre-application consultation obligations in this respect.

	We reserve our position in respect of any comments which may be made on the document submitted.
IOU.2.12	The information has been submitted to the examination.
IOU.2.20	The Projco IPs position is not an "*opportunistic interpretation*" of the current NPSs as is asserted by the Applicant. The Projco IPs have consistently raised the need for wake to be addressed throughout the pre-application process and the examination, taking an approach that is consistent with precedent in the only decision on the subject matter (Awel y Mor) and the Secretary of State's interpretation in its flagship energy policy (Clean Power 2030 Action Plan). The Projco IPs are not, in this circumstance, commercial rivals. The Projco IPs are statutory undertakers, protecting their assets and position. The draft NPS EN-3 does not state that compensation is not an appropriate measure and does not represent (of itself) a "*strong policy against financial compensation*". It states that there is no expectation that inter-project compensation arrangements are a necessary means to mitigate the impact of wake effects, but this will always be subject to compliance with the remainder of the policy. It is not a get out of jail free card for a developer that does not engage with affected parties and does not consider wake in the design of its project. That means that there may be circumstances where such compensation arrangements are a necessary means to mitigate the impact of wake effects, and the Projco IPs' position is that this is one of those circumstances given: 1) the scale of the impact; 2) the failure of the Applicant to engage with this issue or with the Projco IPs; and 3) the failure of the Applicant to comply with current or emerging policy. The fundamental difference between the parties is, in reality, whether compensation is necessary and justified in this case. The Projco IPs position is that such compensation is necessary and justified. Importantly, the Projco IPs are not proposing that compensation is paid now and nor are they proposing that they have the final say on any compensation. The protective provisions identify a process for that compensation to be quantified by an independent expert.
IOU.2.22	The Projco IPs note the Applicant's position on this matter. In the absence of drafting by the Applicants, and given the generally consistent approach adopted by the Projco IPs and the Orsted IPs, we would request that the ExA include the protective provisions for the benefit of DBA, DBB and DBC in the preferred draft DCO issued on 19 June 2025 with comments provided at Deadline 7.
IOU.2.23	The Projco IPs consider that the protective provisions that they have submitted address the two concerns identified by the Applicant in response to this question, in that: a) there is an independent process regarding the wake loss assessment (addressing that area for dispute); and b) mitigation measures are an input, rather than an output, over which the Applicant has control through the design of its project.

	At ISH6, the Applicant raised a number of comments which were not set out in detail in response to the question raised but presented as a high level critique. The points taken are summarised and addressed below. At ISH6, the Applicant sought to argue that the wording of Para 4(2) of the protective provisions obliged mitigation measures to be undertaken by the Applicant. That is plainly not the case; the wording in Para 4(2) of the protective provisions relates to the quantification of the impacts and the approach to compensation and does not oblige mitigation measures. Para 4(1) provides that the first stage of the assessment of Wake Loss takes account of any design or mitigation measures which have been implemented. Whether or not such measures are implemented remains at the discretion of the Applicant but the protective provisions provide (in the interest of fairness and recognising that design may evolve) that the assessment does take account of such mitigation if it is implemented. Again, this plainly does not oblige mitigation measures. At ISH6, the Applicant also sought to argue that the wording requires 100% compensation. Again, that is not the case; the wording in Para 4(2) of the protective provisions allow for a third-party expert to undertake an assessment and apply a mechanism to quantify loss, the financial loss caused and the payment mechanism and timescales for mitigating such financial loss. At ISH6, the Applicant also raised a concern about a third-party expert being the decision maker as opposed to the Secretary of State. If the Applicant's position is that this would be better determined by the Secretary of State as opposed to a third-party expert, then the Applicant can suggest alternative wording. However, we note the complexities associated with the modelling of wake impacts and the Projco IP's position is that such a technical matter may be better considered by an independent expert. The Applicant also raised a concern around the approval process in respect of the guarantee, expressing that this should be subject to Secretary of State approval. Again, if the Applicant's position is that this would be better determined by the Secretary of State as opposed to a third-party expert, then the Applicant can suggest alternative wording The Projco IPs have used the arbitration provisions which are included in the Applicant's draft DCO, and which already apply to the range of matters which may be subject to arbitration. The final point that the Applicant made at ISH6 related to timing of the proposals. We consider that the timing is appropriate, as it requires the necessary approval of documents and understanding of impacts to be in place before the impact is caused (i.e. before turbines are installed) but when final design is known. This is likely to be a number of years from now.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

13 JUNE 2025