

**26 JUNE 2025**

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**DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)**

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**DEADLINE 7 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

**COMMENTS ON THE APPLICANT'S RESPONSES TO EXQ2**

**COMMENTS ON THE APPLICANT'S RESPONSES TO THE FURTHER INFORMATION  
REQUESTED BY THE EXA UNDER RULE 17 OF THE INFRASTRUCTURE PLANNING  
(EXAMINATION PROCEDURE) RULES 2010**

**COMMENTS ON ANY FURTHER INFORMATION/SUBMISSIONS RECEIVED AT  
DEADLINE 6**

**COMMENTS ON THE EXA'S PREFERRED DRAFT DCO**

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**DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)  
DEADLINE 7 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);
  - g. Wake Loss Assessment Report submitted by the Projco IPs (REP5-070); and
  - h. Deadline 6 Submission (REP6-081).
6. The Projco IPs' comments on the Applicants response to the ExA's request for further information under Rule 17 of the Planning (Examination Procedure) Rules 2010 issued on 9 June 2025 (REP6-057) is set out at **Appendix 1** to this submission.
7. The Projco IPs' comments on the Applicant's responses to the Projco IP's comments on the ExA's Second Written Questions (**ExQ2**) (REP6-051) is set out at **Appendix 2** to this submission.
8. The Projco IP's comments on further information and submissions received at Deadline 6 is at **Appendix 3** to this submission.

9. The Projco IP's comments on the ExA's preferred draft DCO is set out at **Appendix 4** to this submission.

### **POSITION SUMMARY**

10. The Projco IPs' position remains 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.
11. The Projco IPs reiterate their request that the protective provisions submitted at Deadline 5 are included in the draft DCO.

### **UPDATED WAKE LOSS ASSESSMENT**

12. The Projco IP's have updated their wake loss assessment and have submitted an updated wake loss assessment (the **Updated Wake Loss Assessment Report**) at Deadline 7.
13. The Applicant identified two material differences between the Applicant's wake loss assessment and the Projco IP's wake loss assessment at ISH6. These related to the blockage model used and the omission of the Hornsea projects in the Projco IP's wake loss assessment. Following further review, the Projco IPs also consider that there is a third material difference which is the approach to long term mean wind speed (**LTMWS**). In respect of these three issues, the Projco IPs consider:
- a. that the blockage model that they have used remains appropriate and so have continued to use that blockage model. The Projco IP's approach to blockage is considered to be consistent with the model setup validated by Ørsted against operational data from their offshore wind portfolio. In addition, the Projco IP's note the Applicant has used a proprietary blockage model which is not available to industry more widely. As such, the Projco IPs are unable to gain confidence in this approach;
  - b. that its approach to LTMWS is appropriate, as it is based on its knowledge of LTMWS at DBA, DBB and DBC and this is explained in the Updated Wake Loss Assessment Report. The Applicant had undertaken to share its approach to LTMWS, but this has not been shared with the Projco IPs.
  - c. the Applicant's comments in respect of the Hornsea projects to be fair and so have included the Hornsea projects (including Hornsea Four) within the Updated Wake Loss Assessment. This has led to an alteration in the level of modelled impact on DBA, DBB and DBC which is explained below.
14. The Updated Wake Loss Assessment continues to demonstrate a far greater impact on DBA, DBB and DBC than the Applicant's wake loss assessment. However, there has been a reduction in the modelled impact which is set out below. The Updated Wake Loss Assessment Report is also considered to represent a conservative assessment, on the basis that it includes Hornsea Four in the modelling despite the fact that Ørsted has publicly confirmed that it is not bringing Hornsea Four forward at this time.
15. The Updated Wake Loss Assessment Report identifies the reduction in expected energy production across DBA, DBB and DBC to be approximately 312 GWh and 9,170 GWh on an annual and lifetime basis, respectively.
16. 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 £17 million and £499 million 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 is subject to market prices at that time or alternative arrangements such as corporate power purchase agreements which would be put in place nearer the time.
17. A loss in the region of £499 million across the operational lifetime is demonstrably significant. Such a loss, of almost 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 Updated Wake Loss Assessment Report. It should be noted that the scale of financial impact at the level outlined in the Projco IPs' Updated 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.
18. As explained in the Updated Wake Loss Assessment Report, the figures identified in paragraphs 14 to 15 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<sup>1</sup> then the financial losses are estimated to be an average of £23 million on an annual basis and £669 million on a lifetime basis.
19. 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.
20. The loss of revenue, if unmitigated, is likely to represent a material risk to the future commercial viability of DBA, DBB and DBC.
21. The Projco IP's position set out in Paragraphs 41 to 49 of its Deadline 6 submission continue to apply.

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<sup>1</sup> 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>

## APPENDIX 1

### PROJCOS' COMMENTS ON THE APPLICANT'S RESPONSES TO EXAMINING AUTHORITY'S RULE 17 LETTER (REP6-057)

Question	Projcos' Responses
R17.25	<p>The Applicant has not addressed the Projco IP's comment at ISH6 in respect of the presentation of the information in the wake loss assessment which is necessary in order to allow the Projco IP's to fully understand the information presented.</p> <p>A project specific assessment in respect of the Projects and which considers all of the Projco IP's projects, which remains absent, would support a more informed assessment of the mitigation options for DBA, DBB and DBC. This is because the specific conditions of the site (including wind speed, wind direction, turbine technology and other physical parameters) form an important part of the understanding of the mitigation. Without that project specific assessment, the Projco IPs cannot comment meaningfully. A further example of the lack of project specific assessment is the effects of applying mitigation to one (as opposed to both) of the array areas (consistent with the approach to environmental assessment where issues are considered alone and in combination).</p> <p>The Frazer Nash Report (AS-014), which as the document identifies was compiled by Elliott Lindsay (the Projco IP's wake loss expert who appeared on behalf of the Projco IPs at ISH6 and who has authored the wake loss assessment (REP5-070) and the Updated Wake Loss Assessment) represents a generic study and does not (and cannot) support a number of the project specific conclusions that the Applicant arrives at.</p>
R17.26	<p>The Applicant's response does not address the question raised and does not assess a range of options for the reduction in size of array areas. The Applicant's response takes this examination no further on this matter.</p> <p>The Frazer Nash study referred to is not a project specific assessment and was not conducted in relation to the Projects. As the Applicant's response identifies, the Frazer Nash report provides an indication of what might be expected if a project specific assessment were carried out but that does not assist in understanding the actual potential range of mitigation that could be secured in respect of DBA, DBB or DBC as a consequence of any mitigation. We note that the Applicant's response does identify that this measure may lead to a small reduction in the wake loss impacts for DBA at least.</p> <p>The Frazer Nash Report, which as the document identifies was compiled by Elliott Lindsay (the Projco IP's wake loss expert who appeared on behalf of the Projco IPs at ISH6 and who has authored the wake loss assessment and the Updated Wake Loss Assessment) represents a generic study and does not (and cannot) support a number of the project specific conclusions that the Applicant arrives at.</p> <p>A project specific assessment in respect of the Projects and which considers all of the Projco IP's projects, which remains absent, would support a more informed assessment of the mitigation options for DBA, DBB and DBC. This is because the specific conditions of the site (including wind speed, wind direction, turbine technology and other physical parameters) form an important part of the understanding of the mitigation. Without that project specific assessment, the Projco IPs cannot comment</p>

	<p>meaningfully. A further example of the lack of project specific assessment is the effects of applying mitigation to one (as opposed to both) of the array areas (consistent with the approach to environmental assessment where issues are considered alone and in combination).</p>
R17.27	<p>The Applicant's response demonstrates that there is a mitigation measure which may be available at the point of construction of the Projects. The Projco IP's position is that the Applicants have prematurely discounted this option.</p> <p>DNV, the independent energy expert and assurance provider, has been undertaking a landmark joint industry project (<b>JIP</b>) validating the feasibility of wind farm flow control technology<sup>2</sup>. The JIP is identified as marking a critical milestone by establishing industry-wide consensus, and is reported as having provided precise predictions of energy yield improvements under real-world conditions. The Projco IPs understand that the JIP has confirmed control technology as being compatible with existing assets and demonstrated quantified energy output gains and the potential for clear benefits.</p> <p>In addition, the Applicants have continued to consider wake control measures such as wake steering in terms of inter-project effects. As identified by the Projco IPs in its Deadline 6 submission, the use of wake control measures such as wake steering should be properly considered in combination with other measures (such as buffers and layout alterations) as a means of mitigating any losses that the Applicant considers may be considered by internal wake loss as a consequence of those other measures. The Applicant's response appears to recognise the potential effectiveness of wake control measures such as wake steering in terms of internal mitigation.</p> <p>A project specific assessment in respect of the Projects and which considers all of the Projco IP's projects, which remains absent, would support a more informed assessment of the mitigation options for DBA, DBB and DBC. This is because the specific conditions of the site (including wind speed, wind direction, turbine technology and other physical parameters) form an important part of the understanding of the mitigation. Without that project specific assessment, the Projco IPs cannot comment meaningfully. A further example of the lack of project specific assessment is the effects of applying mitigation to one (as opposed to both) of the array areas (consistent with the approach to environmental assessment where issues are considered alone and in combination).</p> <p>The Projco IP's protective provisions allow for the Applicant to implement this mitigation measure in its design should the measure come forward. As identified in the Projco IP's comments on the Applicant's response to ExQ2 IOU.2.8 at Deadline 6 (REP6-081) this recognises that further measures may come forward within the seven year period for implementation. Given the long duration of consent validity sought by the Applicant and the speed at which technology innovations occur in the offshore wind industry the Projco IPs consider that this is appropriate.</p>
R17.28	<p>The Projco IPs have no further comment on this response, save to note (as set out in the comment on R17.27 above) that the Projco IPs consider that the Applicant's are prematurely discounting the potential of wake control measures.</p>

<sup>2</sup>

	The Projco IPs have identified the issues with the approach to the mitigation criteria at Deadline 6: see Paragraph 81 and response to R17.23 of REP6-081.
R17.30	The Projco IP's protective provisions allow for the Applicant to implement any mitigation measure which may come forward in its design and align with the Secretary of State's position.

## APPENDIX 2

### PROJCOs' COMMENTS ON THE APPLICANT'S COMMENTS ON THE PROJCO IP'S RESPONSES TO THE EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS (REP6-051)

Question	Projcos' Comments on the Applicant's Response
Executive Summary	<p>The Applicant has not identified any legal or in principle reason why compensation would not be appropriate pursuant to the current NPS EN-3. The Projco IPs have set out in detail the reasons how this would be within the scope of the Planning Act 2008 in REP4-117 and REP5-071.</p> <p>Para 2.1.8 of NPS EN-3 expressly states that: “<i>Applicants must show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy</i>”. The Projco IPs have demonstrated a significant negative effect on DBA, DBB and DBC. The Applicant’s position is that the significant negative effect on DBA, DBB and DBC cannot (at this stage) be mitigated. Therefore, that leaves compensation. The Applicant does not address why compensation would not apply to wake loss effects pursuant to this policy.</p> <p>Draft EN-3 does not rule out financial compensation for wake loss as is asserted by the Applicant and draft EN-3 does not rule out circumstances, such as this, where compensation is a necessary means to mitigate the impact. As has been made clear in the Projco IP’s Deadline 5 and Deadline 6 submissions the relevant policy to which the Applicant refers (draft NPS EN-3 Para 2.8.233) is subject to consultation responses identifying that it should be removed in its entirety. At present, Para 2.8.233 of draft EN-3 attracts little to no weight in this Application given that this specific policy is the subject of consultation responses recommending its removal and given its contradictory nature.</p> <p>In any event, the Applicant’s position that it would be “<i>wholly inappropriate to apply a different approach to a current application</i>” based on draft NPS EN-3 is a fundamental misapplication of the policy hierarchy that applies. The Application falls to be determined pursuant to the current NPS EN-3, with the weight to be afforded to draft EN-3 (or, as is likely when the Application falls to be determined, a newly adopted NPS EN-3) a matter for the Secretary of State on such determination. Wake loss is a matter for the planning system, and draft EN-3 reiterates that. It would be wholly inappropriate to deviate from the application of current policy (and precedent, including emerging precedent in Secretary of State consultations) based on a draft policy that currently attracts little to no weight and which may not form part of an updated NPS once adopted.</p>
IOU.2.3	<p>The Projco IP’s do not intend to comment further in this submission on mitigation measures, noting that there remains an absence of project specific assessment and noting the comments the Projco IP’s have made on the Applicant’s response to ExQ3 at Appendix 1 of this submission.</p> <p><u><i>Financial Compensation - Policy</i></u></p> <p>The Applicant relies primarily on draft EN-3 and Para 2.8.233 for its position that compensation is not payable. It is notable that the Applicant does not draw any support</p>



from the existing NPS for its position, but simply states that: “*There is no reasonable reading of EN-3 which provides a justification for this*”. This would require reading wording in a clear form (which draft EN-3 does not provide) into the current EN-3, and draft EN-3 does not assist in the interpretation of current EN-3.

#### *Current EN-3*

NPS EN-3 makes clear provision for economic loss suffered by third parties to be an important and relevant matter in the determination of the Application with the Secretary of State having to be satisfied that the design of the Projects has been made with a view to “*minimising economic loss*” (NPS EN-3 2.8.345) and recognition that “*available wind resource is critical to the economics of a proposed offshore wind farm*” (NPS EN-3 2.8.28).

NPS EN-3 provides for substantial weight to be provided to the adverse effects of the Projects given the Projco IP’s position that the Projects will have a likely effect on the future viability of DBA, DBB and DBC (NPS EN-3 2.8.347). The Secretary of State cannot be satisfied of the first policy in this examination and must also apply substantial weight to the adverse effect pursuant to the second policy.

As previously noted by the Projco IP’s, the draft DCO already provides for an indemnity to a third party in respect of unquantified economic loss (Paras 47 to 55 of REP4-117).

Finally, Para 2.1.8 of NPS EN-3 expressly states that: “*Applicants must show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy*”.

#### *Draft EN-3*

The Projco IPs approach to draft EN-3 is clearly not “*tortuous*”; it is the correct reading of the draft EN-3. The Applicant has adopted an over-simplistic approach and has misinterpreted Draft NPS EN-3 Para 2.8.233 which the Applicant states: “*rules out financial compensation*”. This is not the case.

As has been made clear, the relevant policy to which the Applicant refers (NPS EN-3 Para 2.8.233) is subject to consultation responses identifying that it should be removed in its entirety.

In any event, the Applicant cannot demonstrate that it has taken all reasonable steps to minimise as far as possible the impact of wake effects because it has not engaged in discussions in respect of compensation or protective provisions. As such, the Projco IP’s position is that the Applicant cannot demonstrate compliance with draft EN-3 Para 2.8.316, which is a gateway to consideration of draft NPS EN-3 Para 2.8.233.

#### Financial Compensation - Principle

It is not plain that the Secretary of State has a “*strong in principle stance against imposing financial compensation with regards to wake effects*” as the Applicant asserts. The Applicant cites two purported precedents to support its position in response to this question. In respect of those two purported precedents:

- Awel y Mor: neither the ExA or the Secretary of State rejected the principle of financial compensation. As identified in the Projco IP’s Deadline 6 submission, the reason that compensation 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).

- Draft EN-3: the Applicant mischaracterises what is said in draft EN-3 as a rejection of the principle of financial compensation. Draft EN-3 makes it clear that the Secretary of State's position is that financial compensation is an approach that can mitigate the impact of wake effects. Draft EN-3 does not rule out circumstances, such as this, where compensation is a necessary means to mitigate the impact. As has been made clear, the relevant policy to which the Applicant refers (NPS EN-3 Para 2.8.233) is subject to consultation responses identifying that it should be removed in its entirety.

The absence of a precedent for compensation is not a justification for not including compensatory measures within the draft DCO given the significance of the impacts on DBA, DBB and DBC.

#### Collaboration

The Applicants have not followed an accepted industry approach to wake effects; this is evident from the information the Applicant has submitted in respect of the Dogger Bank D offshore wind farm (which is another offshore wind farm which is in the pre-application stage) where the developer of that project (which does have partially shared ownership with the Projco IPs) is adopting a different approach to wake loss to that promoted by the Applicant throughout this examination. Please see the comments on the response to IOU2.4 below for further detail.

The Applicant has not “acted appropriately” through the pre-application stage. As has been made clear throughout this examination and was reiterated by the Projco IPs at ISH6, the Projco IPs have consistently sought to engage with the Applicant on wake loss and the Applicant reversed its position on wake loss at ISH1 in spite of precedent and emerging policy. As was made clear at ISH6 in response to questions, the Applicant ignored the Projco IPs requests for engagement following draft environmental statement chapters being shared with the Projco IPs. The draft statement of common ground (REP2-056) shows a consistent pattern of the Projco IPs seeking to engage with the Applicant on this issue without response from the Applicant: see reference to the unanswered requests for updates on 13 May 2024, 1 August 2024, 6 August 2024, 29 August 2024 and 23 December 2024. In spite of these requests, no substantive response was received until 14 January 2025 and the confirmation that wake loss modelling would not be shared. The Projco IPs have also fully engaged with the examination, including addressing requests for information from the ExA on a without prejudice basis which the Applicant has not engaged with. This is not an appropriate level of engagement and the Applicant cannot demonstrate compliance with NPS.EN-3 2.8.200 or NPS EN-3 2.8.261.

The Applicant did not act collaboratively in producing its own wake loss assessment, only engaging with the Projco IPs after the production and submission of that assessment and the Projco IPs comments on that assessment. As has been clear throughout, this engagement is far too late in the process. For example, early

	<p>engagement during the site selection process might have allowed for larger buffers in the emerging design of the Projects. In terms of the requirement for engagement and collaboration, this clearly extends beyond collaboration on modelling which is the extent of the engagement from the Applicant in respect of the Projects.</p> <p>The Applicant cannot demonstrate that it has worked collaboratively with the Projco IPs. Its conduct throughout the pre-application stage and examination demonstrates the opposite and a lack of engagement. As such, the Projco IP's position is that the Applicant cannot demonstrate compliance with draft EN-3 Para 2.8.316.</p> <p><u>Weight</u></p> <p>The Applicant's position in this response is that wake loss impacts on DBA, DBB and DBC should carry "<i>no more than limited weight</i>". This is not credible, and appears to be based on: 1) the application of draft EN-3 (and not the current EN-3); and 2) a position that the Applicant considers that it has complied with draft NPS EN-3 Para 2.8.316 (which the Projco IPs strongly reject).</p> <p>The Applicant's approach to weight is contrary to: 1) the current NPS, which directs the weight to be afforded where there is a likely future affect on viability; and 2) the precedent in the previous Secretary of State's decision on Awel y Mor (where moderate weight was attached to the impact on the affected project in that case in spite of that impact being significantly less than the impact of the Projects on DBA, DBB and DBC).</p> <p>The Projco IP's position is that the adverse impacts on DBA, DBB and DBC attract substantial weight and that this substantial weight necessitates the imposition of the protective provisions.</p>
IOU.2.4	<p>The Projco IPs are not the promoters of the Dogger Bank D project (although the company promoting that project does have partially shared ownership with the Projco IPs) and the information provided by the Applicant in respect of Dogger Bank D does not undermine to any extent the case made by the Projco IPs in this examination.</p> <p>The Applicant's comments on Dogger Bank D are of no relevance to the examination of this Project, save in one respect which is to demonstrate that the Applicant's position that its approach in respect of wake loss has been and is in line with "<i>standard industry practice</i>" of offshore wind developers or that the Applicant is following the "<i>common industry-wide interpretation</i>" (points made in the comments to the Projco's response to IOU2.3) is not correct.</p> <p>The extract of the Dogger Bank D PEIR that the Applicant has provided in its response to this question demonstrates that the promoter of the Dogger Bank D project considers that: 1) wake loss is a planning matter; 2) wake loss is an evolving matter, with the approach that it will take being directed by emerging decisions and guidance; and 3) that at the environmental statement stage it will look to include a detailed wake loss assessment. This shows that promoters of offshore wind farm projects do address wake properly at the pre-application stage, and only serves to reinforce a number of the fundamental flaws in the Applicant's approach that the Projco IPs have identified throughout this examination.</p>

IOU.2.5	<p>The methodology and inputs from both sides are all matters which should have been considered and addressed by the Applicant at the pre-application stage when the Projco IPs were actively seeking to engage with the Applicant on this topic.</p> <p>The Applicants raise consistency and fairness as principles in this response. It is the Applicants that have taken an inconsistent approach to wake loss across the Project and it is the Applicants who have not engaged in pre-application consultation (in spite of requests to do so) by the Projco IPs.</p> <p>The Applicants also raise the ad-hoc way in which this has played out across six recent DCO examinations. The Applicant has decided to adopt the position that it has throughout at its own risk and in knowledge of those five preceding DCO examinations. The Applicant also adopted its current position after the Awel y Mor decision and the publication of the Clean Power 2030 Action Plan.</p> <p>The Projco IP's consider that this examination has addressed this issue in a satisfactory and appropriate manner with cognisance of the preceding DCO examinations and the Secretary of State's approach post-recommendation.</p>
IOU.2.12	The Projco IP's reserve the right to respond to any information submitted at Deadline 7.
IOU.2.13	<p><u>Engagement</u></p> <p>The Applicant's analysis of engagement in respect of viability in this response is misplaced and ignores the fact that the onus is on it, as the applicant subject to the policy, to discharge its policy obligations in bringing the Projects forward.</p> <p>As has been made clear throughout this examination, the Projco IPs have consistently sought to engage with the Applicant. As was made clear at ISH6 in response to questions, the Applicant ignored the Projco IPs requests for engagement following draft environmental statement chapters being shared with the Projco IPs. The draft statement of common ground shows (REP2-056) a consistent pattern of the Projco IPs seeking to engage with the Applicant on this issue without response from the Applicant: see reference to the unanswered requests for updates on 13 May 2024, 1 August 2024, 6 August 2024, 29 August 2024, 23 December 2024. In spite of these requests, no substantive response was received until 14 January 2025 and the confirmation that wake loss modelling would not be shared.</p> <p>The Projco IPs cannot compel the Applicant to engage, and as is clear now the Applicant is still refusing to engage on measures to address the impacts on DBA, DBB and DBC such as protective provisions even on a without prejudice basis.</p> <p>The Applicant has stated, in respect of the Projco IPs, that: "<i>there is an attempt to retrospectively apply a contested interpretation of National Policy Statement (NPS) EN-3 to hold the Applicants to an inappropriate standard</i>". The Projco IPs position has been consistent throughout this scheme; it is the Applicant who reversed its position on planning and EIA at the start of the examination (removing an assessment that it, itself, had scoped in and originally included in the Application) and it is the Applicant which has been inconsistent, seeking to contest the policy in spite of precedent.</p> <p><u>Viability</u></p>

	<p>The Projco IPs position is that the Projects are likely to affect the future viability of DBA, DBB and DBC.</p> <p>The £499 million figure provided is considered to be a conservative assessment.</p> <p><i>Three Phases</i></p> <p>Whilst the DBA, DBB and DBC are owned by separate Projcos they have been developed and will be operated as one. Therefore, as previously outlined at ISH6 and in REP6-081 the impact across all three projects is relevant to consideration of materiality of the impacts from the Projects, and particularly to the potential for impacts on DBA, DBB and DBC's future viability. DBA, DBB and DBC secured CfDs in the same bidding round, with the projects phased over the two available delivery years with DBA in the first and DBB and DBC in the second. Key offshore work packages were contracted for all three phases (i.e. turbines, foundations, marine installation, HVDC system, vessels etc.) treating them as part of one larger project allowed for the greatest synergies in construction and operation, in turn reducing the overall cost of the projects. In practical terms, this means that activities can be flexed between DBA, DBB and DBC during construction and operation to account for the challenges naturally encountered in the management of such large-scale projects in a challenging marine environment. Such an approach is normal within one wind farm and this is effectively simply scaled up in this case as the three projects are managed as one larger project. This ensures the most efficient construction and operation of the three projects so that the Projco IPs are able to deliver on what were record low strike prices secured in CfD Auction Round 3.</p> <p>In relation to wake impacts, the operational approach to DBA, DBB and DBC is perhaps more critical given it is this period which will see overlap and impact from the Projects. The approach DBA, DBB and DBC take in this phase to synergistic operations is formally covered through a binding legal agreement between each and all of the separate Projcos and the operator of the Projcos (the <b>Coordination Agreement</b>). The Coordination Agreement authorises and instructs an operator to carry out the management of its services (which includes management of the Projcos) towards each project in the interest of the Dogger Bank Wind Farm as a whole (i.e. DBA, DBB and DBC as one). The Coordination Agreement has hierarchical precedence over any single project's management agreement, other agreements and contracts. Further, the Coordination Agreement allows for economies of scale to be achieved, as well as mechanisms for how to manage the loss of one (or more) of DBA, DBB or DBC for whatever reason, for example if one of those projects were to become unviable. Put simply, the loss of one (or more) of DBA, DBB or DBC would increase the costs of the remaining projects due to the loss of economies of scale. For example, a vessel currently shared between three projects would have to be taken on by only the remaining projects.</p> <p>As previously outlined, it is too simplistic to simply analyse DBA, DBB and DBC separately and this is a further area where the lack of engagement is material.</p> <p><i>Discounting</i></p> <p>The Applicant has referred to discounting, but this is not relevant because the Projco IPs are not requesting payment of a commuted sum upfront but have instead structured the</p>
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protective provisions to allow for an annualised payment in each year of impact which would not require discounting.

*Timeline and Project Specific Assessment*

The history of the development of DBA, DBB and DBC is not relevant to this examination. The policy test in respect of viability is one of a likely affect on future viability, not one of an impact on viability today or on viability as assessed in the past. However, in terms of ensuring that the timeline is properly set out and understood we have set out the timeline below:

- September 2019: CfD award announced for DBA, DBB and DBC;
- October 2019: CfD signed for DBA, DBB and DBC;
- November 2020: DBA and DBB reach financial close;
- February 2021: TCE announces initial results of Round 4 offshore wind tender;
- December 2021: DBC reaches financial close;
- April 2022: the plan-level HRA for TCE’s Round 4, which was required in order for there to be certainty that Round 4 projects could proceed, was concluded;
- July 2022: the Applicant’s request for a scoping opinion, with a broad redline (which reflects the bid area but not the final extent of the Projects) submitted;
- January 2023: the Applicant signs Agreement for Lease with TCE in respect of the Projects, which was required in order for there to be certainty that the Projects could proceed; and
- Summer 2023: statutory consultation in respect of the Projects, where the array areas were identified.

This is important, as prior to February 2021 the area within which the Projects may be situated was not known. In respect of the Dogger Bank zone, the Round 4 tender process was over a much wider area (as shown on page 16 of TCE’s Information Memorandum (REP3-038), and the Applicants (as part of their bidding process) will have identified an area within that zone (unknown to the Projco IPs) in their bids. As the Applicant’s site selection assessment shows (Figure 4.1 – APP067) the agreement for lease boundaries that were awarded in January 2023 are wider than the array areas that the Applicant has selected for the delivery of the Projects. This means that even in January 2023 there would be no certainty as to the array area for the Projects as the project refinement process was ongoing.

When DBA, DBB and DBC reached financial close there was clearly no certainty that the Projects would proceed (as the plan-level HRA had not been finalised, an agreement for lease was not in place and the Projects had not been through scoping).

As the TCE acknowledges in its response (REP6-078), the “*location of a wind farm, (along with wind turbine specifics such as height, rotor diameter, MW power) within an area of seabed leased from The Crown Estate is for developers to decide and design for, subject to obtaining the necessary consents and The Crown Estate's approval*”. These are all factors which are required to inform a project specific wake loss assessment and understand wake loss impacts.

	<p>It is also important to reiterate the point made at Paragraph 25 of the Projco IP's Deadline 6 submission that the TCE's leasing process for Round 4 commenced in advance of the more substantial industry knowledge on inter-farm wake loss and this position has continued to evolve significantly after the closure of TCE's leasing round.</p> <p>The general tenor of the Applicant's comments reflects the flawed approach taken to wake loss throughout this examination and is based on an expectation that the Projco IPs undertake an assessment based on a generic risk (and not a site-specific issue as matters progress through planning), as opposed to the Applicant's assessing the impact of its Projects (the design of which only the Applicant will have been aware of) and engaging with the Projco IPs. Since that design has emerged in 2023, the Projco IPs have sought to engage on the project specific risk that the Projco IPs have identified.</p> <p><u>Round 4 Bid</u></p> <p>The Applicant's position in respect of Round 4 and its finances is effectively a broader point of policy argument, and relates to the Applicant's original argument that wake loss is not a matter for planning which the Secretary of State has squarely rejected. It is clear that the balance is now in favour of new projects mitigating wake loss impacts on existing projects and so the Applicant's position is contrary to the direction of travel of decisions and policy,</p> <p>The imposition of compensation would not be a "retrospective" measure. It is a measure which is imposed, as with other mitigation measures and compensatory measures, through the planning process which is designed to address the specific impacts of projects as they are developed. The TCE process is not a planning process and is not designed to address such measures.</p> <p>The Applicant's position in this response is based on an underlying point that it has not assessed the prospect of the payment of compensation as part of its project development. This is a failing on its part, as it has to develop its projects in accordance with all relevant planning policy. The failure to consider this is not a reason for compensation not to be imposed.</p> <p>The converse is also true, and investor confidence in planned and operational wind farms will be affected if these impacts are left unmitigated (where such mitigation can include compensation). As set out in the Projco IP's response to ExQ1 IOU.1.12 (at Deadline 3 – REP3-063). In terms of the balance and need to protect projects from a financial perspective in order to provide certainty, this weighs in favour of DBA, DBB and DBC as committed projects and this reflects the direction of travel. This reflects the importance of preserving the viability of DBA, DBB and DBC (which will contribute to Clean Power 2030 and which are more certain contributors than the Projects given their current status).</p> <p>The Projco IPs have set out their position that the absence of compensation will lead to a likely affect on the future viability of DBA, DBB and DBC. The Applicant has not made the converse statement, and has not made a case that the payment of compensation will have an effect on the future viability of the Projects.</p>
IOU.2.15	The Projco IP's reserve the right to respond to any information submitted at Deadline 7.
IOU.2.16	The Projco IPs reiterate their position in response to IOU2.16 at Deadline 5 and the Applicant continues to misrepresent this matter in what appears to be an attempt to play

	<p>downplay the significance of this matter. Wake loss should be considered as a bias always reducing the energy produced by DBA, DBB, and DBC each year. inter-annual variability (<b>IAV</b>) is accounted for in modelling the yield on which all project investment decisions are made, whereas wake effects are an additional, consistent impact each year. IAV does not offset wake impacts, and, unlike wake effects, can increase or decrease energy production.</p>
IOU.2.21	<p>The Projco IP's protective provisions are appropriate and are workable. It is important to note, as set out in more detail in the response to the Applicant's comments on the Projco IP's response to IOU2.22 below, that the Applicant's comments go to the justification for the protective provisions (i.e. whether they are necessary in this case) as opposed to the substance of the protective provisions.</p>
IOU.2.22	<p>As the Applicant notes in its submissions on the protective provisions, it has not provided detailed drafting comments or alternative drafting.</p> <p>Instead, the Applicant has made a number of high-level observations on the detailed protective provisions provided by the Projco IP's and the Orsted IPs.</p> <p>The Applicant's position is that the protective provisions are not required or appropriate. Whilst not expressed here, this is presumably (in part) on the basis of: 1) the "<i>limited weight</i>" attributed to the adverse impacts to DBA, DBB and DBC in the planning balance; 2) the "<i>negligible</i>" effects concluded as part of the wake loss assessment; and 3) the Applicant's policy analysis more generally.</p> <p>Taking the various points made by the Applicant in turn.</p> <p><b><u>Mitigation</u></b></p> <p>The drafting of the protective provisions provided by the Projco IPs does not concede that there are no mitigation measures available or (more importantly) that there will be no mitigation measures available in a number of years' time when the process set out in the protective provisions is engaged. The protective provisions do not oblige (but allow for) the Applicant to include mitigation measures in the design of the Projects, but do provide for any such measures to be taken account in the updated wake loss assessment. This is clearly a reasonable position to adopt.</p> <p><b><u>Uncertainty</u></b></p> <p>There is a general statement that the protective provisions would create "<i>significant uncertainty</i>" for the Projects. There is no rationale behind this statement or explanation as to what this significant uncertainty is; the protective provisions set a clear process, and the protective provisions provide a more stringent process for the quantification of impacts and assessment of compensation than other full indemnities provided in the draft DCO (for example that provided to Network Rail Infrastructure Limited pursuant to Para 14(3) of Part 5 of Schedule 15 to the draft DCO).</p> <p>The Applicant has now been asked repeatedly to engage on the drafting of protective provisions and has not done so, and has not demonstrated that the protective provisions are not satisfactory. It is in the Applicant's power to engage with affected parties like the Projco IPs in order for the Applicant to address this uncertainty and it has refused to do so.</p>



Effectively, the Applicant's position is that the adverse effects are left unmitigated because of unspecified uncertainty this would cause to the Projects. This is not accepted or justified.

### **Financial Compensation**

This is not "*completely at odds with policy*" as explained in previous submissions and throughout this response. Taking each point made in turn.

### **Paragraph 8 – National Scheme**

Paragraph 8 of the protective provisions is included to ensure that the Applicant is protected from any form of double recovery if such a national scheme were to be developed. It does not imply that any such scheme is currently being promoted, and the Secretary of State will understand this.

If the Applicant does not wish to have the benefit of such protection in the protective provisions, then this can be deleted.

### **Secretary of State's Position**

The Secretary of State has not "*consistently rejected the principle of financial compensation*" as the Applicant asserts. The Applicant cites three purported precedents to support its position. In respect of those three purported precedents:

- Awel y Mor: neither the ExA or the Secretary of State rejected the principle of financial compensation. As identified in the Projco IP's Deadline 6 submission, the reason that compensation 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).

In any event, the circumstances in respect of Awel y Mor and its impacts are materially different and the Projco IPs position is that the impacts caused by the Projects on DBA, DBB and DBC are significantly greater than the impacts caused by the Awel y Mor offshore wind farm on Rhyl Flats.

- Draft EN-3: the Applicant mischaracterises what is said in draft EN-3 as a rejection of the principle of financial compensation. Draft EN-3 makes it clear that the Secretary of State's position is that financial compensation is an approach that can mitigate the impact of wake effects. Draft EN-3 does not state that there will not be circumstances, such as this, where compensation is a necessary means to mitigate the impact. As has been made clear, the relevant policy to which the Applicant refers (NPS EN-3 Para 2.8.233) is subject to consultation responses identifying that it should be removed in its entirety.
- Mona: the Mona consultation does not reject the principle of compensation. It requests that information is provided in respect of a number of matters. In any event, the circumstances in respect of Mona and its impacts are materially different and the Projco IPs position is that the impacts caused by the Projects on DBA, DBB and DBC are significantly greater than the impacts caused by the Mona offshore wind farm on affected projects. It is also important to note

	<p>that the Secretary of State has issued an identical request in respect of the Morgan Offshore Wind Farm by a letter dated 19 June 2025.</p> <p><u>Public Interest Issues and Government Guidance</u></p> <p>The imposition of the protective provisions will be the culmination of the public interest issue in this case as part of the DCO decision and will (if included in the DCO) be a decision by the relevant Secretary of State and so will be government-led. There would be no requirement for an alternative governmental process, and as the Applicant highlights its understanding is that there is no such governmental process underway. As such, this only serves to reinforce that specific protective provisions are the only mechanism to address this.</p> <p><u>Expert Provision</u></p> <p>The substantive issues are proposed to be resolved by an independent third-party expert in the absence of agreement between the parties. The Projco IP's do not consider this to be a fundamental issue and consider that a third-party expert would be best placed to address such matters, but notes that the Applicant has raised that this could be the Secretary of State as opposed to a third-party expert. This is a drafting point.</p> <p>As noted in the Projco IP's Deadline 6 submission, if the concern relates to a third-party then an alternative could be determination by the Secretary of State. However, the Projco IP's position is that a third-party expert is preferable for inclusion within the protective provisions on the basis that such a party will have a detailed knowledge of the modelling inputs and technical subject matter.</p> <p><u>Examples</u></p> <p>The Applicant has provided four examples which purport to demonstrate problems with the protective provisions.</p> <ul style="list-style-type: none"> <li>• On the first example provided, the Applicant is commenting on another examination which relates to a materially different set of circumstances linked to Round 2 offshore wind farms and extension projects. The protective provisions in front of this examination do not address this circumstance which relates to a different set of interactions in relation to an extension project which is subject to a different application. The basis of the wake loss assessments provided in respect of this Project are clear, and this purported issue is not relevant to the form of protective provisions in front of this examination.</li> <li>• On the second example, the wake loss mitigation scheme to be secured pursuant to Para 4(2) of the protective provisions must include the mechanism for quantifying the financial loss caused which would address such matters. If there were to be any dispute between the parties the protective provisions allow for appointment of a third-party expert. The Applicant has raised that this could be the Secretary of State as opposed to a third-party expert. If there were to be a dispute about the third-party expert, this would be resolved by arbitration. This is a clear process, and is clearer than other processes included in the Applicant's draft DCO where matters of detail or compensation are payable or referable to arbitration in the event of any dispute (for example Para 5(4) and Para 6(3) of Part 1 of Schedule 15 to the draft DCO in respect of utility undertakers and Para</li> </ul>
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	<p>14(3) of Part 5 of Schedule 15 to the draft DCO in respect of Network Rail Infrastructure Limited).</p> <ul style="list-style-type: none"> <li>On the third example, the Applicant is again commenting on a different form of protective provisions in respect of a different entity submitted as part of a different examination. The Projco IPs have provided for an assessment which will address these measures (see Para 4(2)), which identifies that the payment profile will be based on annual impacts. The Projco IPs have intentionally avoided the imposition of an indemnity or the payment of a commuted sum to avoid over-compensation and have also ensured that the protective provisions only extend to the operational lifetime of the projects with paragraph 5 of the protective provisions ceasing to have effect if one of the projects ceases to be operational. This purported issue is not relevant to the form of protective provisions in front of this examination. The Projco IPs would be open to discussing the nature of the payment structure if the Applicant would prefer an alternative payment structure, but the Applicant has not engaged to date.</li> <li>On the fourth example, the Applicant has referred to discounting, but as identified above this is not relevant because the Projco IPs are not requesting payment of a commuted sum upfront but have instead structured the protective provisions to allow for an annualised payment which would not require discounting. If there were to be any dispute between the parties the protective provisions allow for appointment of a third-party expert. The Applicant has raised that this could be the Secretary of State as opposed to a third-party expert. If there were to be a dispute about the third-party expert, this would also be resolved by arbitration. As per the second example, this is a clear process and is clearer than other similar processes included in the Applicant's draft DCO.</li> </ul> <p>As a general point, and noting the response to IOU.2.23 below, the Projco IPs do not accept the criticism of the role of the arbitrator in the protective provisions. This is consistent with other protective provisions within the draft DCO, and incorporates the arbitration provisions in article 47 of the draft DCO (and associated arbitration rules at Schedule 16 to the draft DCO).</p>
IOU.2.23	<p>The Applicant's response conflates two issues; third-party expert determination and arbitration.</p> <p>The substantive issues are proposed to be resolved by an independent third-party expert in the absence of agreement between the parties. The Projco IP's do not consider this to be a fundamental issue and consider that a third-party expert would be best placed to address such matters, but notes that the Applicant has raised that this could be the Secretary of State as opposed to a third-party expert.</p> <p>The Projco IP's drafting of the arbitration provisions is based on the Applicant's drafting, where (as identified in the response to IOU.2.22) it is applied in a number of cases across the draft DCO (see, for example, Paragraph 20 of Part 5 of Schedule 15 to the draft</p> <p>NPS EN-3 provides that "<i>in some circumstances, the Secretary of State may wish to consider the potential to use requirements involving arbitration as a means of resolving</i></p>

	<i>how adverse impacts on other commercial activities will be addressed”</i> which demonstrates policy support for this approach.
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### APPENDIX 3

#### PROJCOS' COMMENTS ON FURTHER INFORMATION AND SUBMISSIONS RECEIVED AT DEADLINE 6

Document	Projcos' Comments
Written Summary REP6-055	The Applicant identified that it had used the Globe blockage model at ISH6 and the Projco IPs undertook to engage with the Applicant on this matter (see Para 33 of REP6-055). Following such engagement, it is clear that the Applicant has used a proprietary blockage model (and not the Globe model they claimed at ISH6).

## APPENDIX 4

### PROJCOS' COMMENTS ON THE EXA'S PREFERRED DRAFT DCO

Article	Projcos' Comments
Protective Provisions	<p>The Projco IPs position is that they have justified the requirement for the protective provisions for the benefit of DBA, DBB and DBC through their submissions to this examination and that it is appropriate for those protective provisions to be included in the draft DCO. The Projco IP's submissions have demonstrated that the imposition of such protective provisions is lawful, and the protective provisions are precise and enforceable.</p> <p>The Applicant has not engaged with the drafting of the protective provisions (save to note that references to the third-party expert may be more suitable as references to the Secretary of State), and the Projco IPs respectfully request that the protective provisions are included in the draft DCO in the form submitted by the Projco IPs at Deadline 5.</p>

**CMS CAMERON MCKENNA NABARRO OLSWANG LLP**

**26 JUNE 2025**