Pinsent Masons

Ørsted IPs – Deadline 8 (Closing) Submission

Introduction

This submission is made on behalf of Hornsea 1 Limited, the collective of Breesea Limited, Soundmark Wind Limited, Sonningmay Wind Limited and Optimus Wind Limited (together, the **Hornsea 2 Companies**), Orsted Hornsea Project Three (UK) Limited, Orsted Hornsea Project Four Limited, Lincs Wind Farm Limited, Westermost Rough Limited and Race Bank Wind Farm Limited (together, or in any combination, the **Ørsted IPs**).

This submission comprises the Ørsted IPs' closing submissions in relation to the examination of the Dogger Bank South Offshore Wind Farm Project (the **DBS Project**). The Ørsted IPs note that only Hornsea 1 Limited, the Hornsea 2 Companies and Orsted Hornsea Project Three (UK) Limited continue to hold objections to the DBS Project relating to wake loss.

This submission does not purport to repeat, at length, the submissions made by the Ørsted IPs in this examination thus far (as listed below). Instead, it summarises the Ørsted IPs' position on the key matters before the Examining Authority and responds, where relevant, to certain points made in the Applicants' Deadline 7 submissions.

- Relevant Representation of Hornsea 1 Limited **[RR-023]**;
- Relevant Representation of the Hornsea 2 Companies **[RR-005]**;
- Relevant Representation of Orsted Hornsea Project Three (UK) Limited **[RR-045]**;
- Relevant Representation of Orsted Hornsea Project Four Limited **[RR-044]**;
- Relevant Representation of Lincs Wind Farm Limited **[RR-029]**;
- Relevant Representation of Westermost Rough Limited **[RR-056]**;
- Relevant Representation of Race Bank Wind Farm Limited **[RR-046]**;
- Deadline 1 Submission **[REP1-086]**;
- Deadline 3 Submission **[REP3-064]**;
- Deadline 4 Submission **[REP4-121]**;
- Deadline 5 Submission **[REP5-074]**;
- Deadline 6 Submission **[REP6-085]**;
- Deadline 7 Submission **[REP7-157]**; and
- Deadline 8 Submission (this document).

National Planning Policy

The Ørsted IPs position in relation to wake loss, and the application of the National Policy Statements (**NPS**), has been made throughout the examination. NPS EN-3 clearly captures existing offshore wind farms (see the Ørsted IPs' Deadline 3 Submission) and therefore the policy requirements must be complied with by the Applicants. The Ørsted IPs' position regarding various aspects of NPS EN-3 is set out below.

Current NPS EN-3

Paragraph 2.8.197 of NPS EN-3 provides that "*where a potential offshore wind farm is proposed close to existing operational offshore infrastructure, or has the potential to affect activities for which a licence has been issued by government, the applicant should undertake an assessment of the potential effects of the proposed development on such existing or permitted infrastructure or activities*". The Applicants did not comply with this requirement until Deadline 5 of the examination, despite multiple requests from the Ørsted IPs for this assessment to be undertaken. The Ørsted IPs position in relation to the word "*close*" for the purpose of this policy – and in the context of the word "*nearby*" used in draft NPS EN-3 – has been explained throughout their submissions (see, for example, the Ørsted IPs' Deadline 5 Submission). Separation distance will not necessarily be the primary factor determining wake effect – for example, relative positioning with respect to the predominant wind direction may have a greater bearing on wake effect than distance alone, alongside other factors such as the scale of an applicant's project, the temporal

overlap between the operational lifetimes of the waking and waked offshore wind farms, and the turbine technology and layout.

Paragraph 2.8.344 of NPS EN-3 provides that "*in such circumstances, the Secretary of State should expect the applicant to work with the impacted sector to minimise negative impacts and reduce risks to as low as reasonably practicable*." The Applicants have not worked with the Ørsted IPs in the evolution of the DBS Project and have not sought to minimise negative impacts as they have not engaged in meaningful discussions regarding the application of mitigation (apart from to opine that all potential forms of physical mitigation are unreasonable) nor the application of protective provisions that would secure compensation to cover residual effects.

Paragraph 2.8.345 of NPS EN-3 provides that the "*Secretary of State should be satisfied that the site selection and site design of a proposed offshore wind farm and offshore transmission has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries*." The Secretary of State cannot be so satisfied in this case, as the site selection process does not demonstrate consideration of the wake loss impacts and does not demonstrate an attempt to minimise disruption or economic loss. NPS EN-3 makes clear provision for economic loss suffered by third parties to be an important and relevant matter in the determination of an 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*" (paragraph 2.8.345), and through the recognition that "*available wind resource is critical to the economics of a proposed offshore wind farm*" (paragraph 2.8.28).

Paragraph 2.1.8 of NPS EN-3 states that "*applicants must show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy*". The Ørsted IPs' position on mitigation is set out most expressly in the Ørsted IPs' Deadline 6 Submission – in summary, there are physical mitigation measures that can reduce wake impacts, but it is unlikely these measures will be sufficient to remove the concern over remaining wake. Therefore, compensation is a perfectly valid form of mitigation (particularly for economic impacts). In terms of the assessment of mitigation, the Applicants have relied on a concept of "net positive" (expressed as being no significant harm to the net generated renewable energy) – this concept has no legal basis and solely serves to reflect the Applicants' approach to the design of the DBS Project, i.e. the maximisation of energy generation with no consideration of the impact on the Ørsted IPs' assets.

Paragraph 2.8.342 of NPS EN-3 provides that "*where a proposed offshore wind farm potentially affects other offshore infrastructure or activity, a pragmatic approach should be employed by the Secretary of State*". As set out in the Ørsted IPs' Deadline 6 Submission, the Ørsted IPs note that compensation agreements are a form of mitigation that is likely to be necessary to address residual impacts not addressed by other (physical) mitigation. Without the planning lever, it seems inevitable (given the position put forward by the Applicants in this examination, and by applicants in other similar recent DCOs) that offshore wind projects will be materially commercially impacted by waking projects with no recourse. This is a serious concern for the Ørsted IPs and other impacted developers, setting a precedent that is contrary to a "*pragmatic approach*" and detrimental from both large-scale (i.e. the UK wind industry) and small-scale (i.e. individual bill payers) perspectives. The only approach which would allow for consent to be lawfully granted whilst providing the necessary protection to the Ørsted IPs would be to impose the protective provisions proposed by the Ørsted IPs (latest version in the Ørsted IPs' Deadline 6 Submission).

The Ørsted IPs also wish to reiterate the points made in the Ørsted IPs' Deadline 4 Submission regarding the broader consideration of co-existence in the context of NPS EN-3 that brings compensation into play. Paragraph 4.3.4 of NPS EN-1 states that "*to consider the potential effects, including benefits, of a proposal for a project, the applicant must set out information on the likely significant environmental, social and economic effects of the development, and show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for*" (emphasis added). The Applicants not compensating the Ørsted IPs would set a precedent whereby a commercial rival developing a new project is enabled to devalue existing operational assets by tens or hundreds of millions of pounds without consequence, i.e. without having to

shoulder the burden of, or in any way share the pain of, coexistence. The policy drive of the current NPS regime includes the requirement for applicants to implement best efforts to work with owners of existing infrastructure to ensure adverse effects are addressed and/or resolved, which could include compensation; indeed, this is a perfectly valid form of mitigation for economic impacts, as it can reduce an economic impact from a significant level to an acceptable level (or at least to a not significant level) and is often the only form of mitigation that is available and/or practicable in relation to human environment impacts. The policy drive of the relevant sections of NPS EN-3 is for new offshore wind development to engage with existing sea users to ensure that the effects of proposed developments are appropriately mitigated, such that co-existence is possible. The expectation is that applicants take a broad approach to addressing adverse effects, and there is no reason why this cannot include compensation. The mitigation of economic loss is routinely secured within DCOs, whether in the form of a requirement or protective provisions.

Draft NPS EN-3

The Ørsted IPs' position regarding draft NPS EN-3 was discussed at Issue Specific Hearing 6 and is set out in the Ørsted IPs' Deadline 6 Submission. In summary, the Ørsted IPs do not consider that there is anything in draft NPS EN-3 that invalidates the arguments set out by the Ørsted IPs above (and in previous submissions) in relation to compensation. In addition, the consultation document which accompanies the draft NPS serves to further enhance the Ørsted IPs' position that there is a clear application and interpretation of the existing NPSs by referring to the additional policies in draft NPS EN-3 as providing "*greater clarification*" to these.

Other Considerations

The Ørsted IPs wish to highlight several other considerations which support their position in relation to policy:

- Clean Power 2030 Action Plan – governmental targets and intentions will be impacted if co-existence is not prioritised in line with the position set out by the Ørsted IPs, between existing and new assets. See also the Ørsted IPs' Deadline 5 Submission.
- Awel y Mor:
    - As set out in the Ørsted IPs' Deadline 7 Submission, the Awel y Mor requirement does not preclude a financial settlement (indeed, this may be the likely outcome preferred over physical mitigation).
    - In addition, the Ørsted IPs note that the current NPS EN-3 (as has been adopted in this examination) was designated after the Awel y Mor requirement came into existence and did not change the wording of the policies to exclude offshore wind.
    - Whilst the Applicants' position throughout this examination has been that it disagrees with the Awel y Mor requirement, their arguments solely amount to a rehashing of the unsuccessful arguments in the Awel y Mor examination. The ExA in that examination recognised that the precedent was needed to control the final design and to ensure policy compliance, an opinion which was endorsed by the previous Secretary of State and recognised by the current Secretary of State, who is issuing consultations that expressly refer to the current NPSs. The position of the Ørsted IPs is consistent with this.
- Mona Offshore Wind Farm Project – as set out in the Ørsted IPs' Deadline 7 Submission, in response to a letter from the Secretary of State dated 12 May 2025 in relation to the examination of the Mona offshore wind farm, the applicant in that case included (on a without prejudice basis) in its response (dated 23 May 2025) a draft DCO requirement on wake loss that contained the option of a private settlement as one limb of this draft requirement.

Conclusion

The Applicants cannot demonstrate that they have complied with the majority of the relevant policies in NPS EN-1 and NPS EN-3, nor the relevant policies in draft NPS EN-3.

Wake Loss Assessment

As stated in the Ørsted IPs' Deadline 6 Submission, given the late stage of the examination at which the Applicants submitted a wake loss assessment that considered the wake impact on the Hornsea 1-4 offshore wind farms, the Ørsted IPs took the decision, in an attempt to act reasonably and with pragmatism, to accept the figures presented in this wake loss assessment for Hornsea 1, Hornsea 2 and Hornsea 3, and used these figures to conduct the Financial Impact Assessment at Appendix 1 to the Ørsted IPs' Deadline 7 Submission.

As stated throughout the examination, though, the Ørsted IPs would have preferred an independent assessment of wake loss; the Ørsted IPs maintain that this industry-standard approach offers improved visibility and therefore greater utility.

Significance and Impact

As stated in pages 12-14 of the Ørsted IPs' Deadline 6 Submission, consideration of the EIA 'limbs' identified by the Applicants lead to the conclusion, in the Ørsted IPs' view, that effects from wake loss from the DBS Project on the Ørsted IPs' assets is likely to be major (significant), thereby being significant in EIA terms and warranting mitigation and/or compensation. This is only enhanced further by the findings of the Financial Impact Assessment, included as Appendix 1 to the Ørsted IPs' Deadline 7 Submission, which shows total financial losses of between £84m and £295m from the DBS Project alone (rising to £106m to £319m, in relation to Hornsea 1 and Hornsea 2 only, when the cumulative impact of the Outer Dowsing Offshore Wind (Generating Station) Project is factored in).

The Applicants have not demonstrated that the wake loss impacts are not significant in EIA terms.

Effect on Future Viability

As set out in the Financial Impact Assessment at Appendix 1 to the Ørsted IPs' Deadline 7 Submission (and alongside the material loss of value), the wake loss impacts imposed by the DBS Project are expected to challenge the economic viability of the Hornsea 1 and Hornsea 2 offshore wind farms, from the point at which market support for these assets falls away and the assets' revenue streams become fully merchant, i.e. as the financial case for these assets becomes more constrained. The cumulative wake loss incurred as a result of both the DBS Project and the Outer Dowsing Offshore Wind (Generating Station) Project of 1.3% and 1.4% for the Hornsea 1 and Hornsea 2 offshore wind farms respectively will influence lifetime extension decisions and lead to a likely outcome of the earlier-than-otherwise decommissioning of the two assets.

Paragraph 2.8.347 of NPS EN-3 provides that where a proposed development is likely to affect the future viability of a scheme, 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 Ørsted IPs' position is that losses at the scale identified represent a material risk to the future viability of the projects. This paragraph of NPS EN-3 does not require demonstration that the Ørsted IPs' assets are unviable, nor does it require that a full viability assessment is submitted to the examination. It requires a conclusion that the DBS Project is likely to affect the future viability of these assets (i.e. Hornsea 1 and Hornsea 2).

This policy goes to the weight to be afforded to the negative effect, and directs that the Secretary of State must place substantial weight on adverse effects where such a likely effect on future viability is found to exist.

Principle of Compensation

The Ørsted IPs have set out their position regarding the applicability of, and justification for, compensation across various submissions in the examination.

As stated above, the effects from wake loss from the DBS Project on the Ørsted IPs' assets is considered to be major (significant), thereby meriting consideration of mitigation and/or compensation. This is only enhanced further by the findings of the Financial Impact Assessment, included as Appendix 1 to the Ørsted IPs' Deadline 7 Submission, which shows total financial losses of between £84m and £295m from the DBS Project alone (rising to £106m to £319m, in relation to Hornsea 1 and Hornsea 2 only, when the cumulative impact of the Outer Dowsing Offshore Wind (Generating Station) Project is factored in).

Financial compensation, for both wake loss and for other types of human environment impact, is an accepted form of mitigation for a number of offshore wind farms located across UK waters. There are a range of instances whereby financial compensation is routinely used to deal with economic impacts (alongside physical mitigation, where appropriate), including, for example, fisheries compensation. In the Ørsted IPs' view, there is no reason why the wake losses that will be introduced by the DBS Project should be excluded from this. Ensuring that wake losses are agreed upon (through modelling), and financially compensated for, is not particularly complex – a range of tried-and-tested approaches can be adopted.

The Awel y Mor requirement does not preclude a financial settlement; indeed, this may well be the outcome that is preferred over physical mitigation. Furthermore, the draft NPS EN-3 makes a direct reference to financial compensation at paragraph 2.8.233, where it states that "*there is no expectation that wake effects can be wholly removed between developments, or that inter-project compensation arrangements are a necessary means to mitigate the impact of wake effects, although developers may opt to take such approaches outside of the planning process*" (emphasis added). The Ørsted IPs' note, though, that the Applicants' draft DCO already includes indemnification for loss of revenue which is contained within protective provisions in favour of another party (i.e. Network Rail). The Ørsted IPs' position regarding protective provisions is summarised under the corresponding heading below.

As stated above, paragraph 2.1.8 of NPS EN-3 states that "*applicants must show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy*". The Ørsted IPs have demonstrated a likely significant negative effect on the Ørsted IPs' assets, and the Applicants' position is that this effect cannot be mitigated (though see below regarding the Applicants' failure to engage with the Ørsted IPs' previous criticisms of their mitigation conclusions). If the Applicants' position is taken to be true, that leaves compensation as a means of addressing this effect. The Applicants do not address, in policy terms, why compensation would not apply to wake loss effects pursuant to this policy, and similarly do not address why, in policy terms, it would meet the test of "*Wednesbury unreasonableness*" to impose such compensation. The Applicants rely on their interpretation of Awel y Mor and draft NPS EN-3 (which does not have effect in respect of this application) to assert that the Secretary of State has rejected (in principle) compensation. That is an incorrect reading of Awel y Mor, and an incorrect interpretation of a draft policy which does not apply.

The Applicants have also stated that the application of the mitigation hierarchy is questionable. NPS EN-1 (a policy which applies to the determination of the application) provides:

- Paragraph 4.1.5: "*In considering any proposed development, in particular when weighing its adverse impacts against its benefits, the Secretary of State should take into account…..as well as any measures to avoid, reduce, mitigate or compensate for any adverse impacts, following the mitigation hierarchy*". The impact on the Ørsted IPs' assets is an adverse impact to be weighed accordingly.
- Paragraph 4.2.10: "*Applicants for CNP infrastructure must continue to show how their application meets the requirements in this NPS and the relevant technology specific NPS, applying the mitigation hierarchy*". This cannot be demonstrated.
- Paragraph 4.2.11: "*Applicants must apply the mitigation hierarchy and demonstrate that it has been applied*". This cannot be demonstrated.

The imposition of compensation via the protective provisions would not meet the test of "*Wednesbury unreasonableness*" and is consistent with the NPSs that are applicable to this examination. The fact that wake loss is a planning matter, the scale of the impacts to the Ørsted IPs' assets, the fact that the policy provides for compensation and the direction of travel in emerging policy is sufficient to demonstrate that compensation via the protective provisions is reasonable.

Clean Power 2030 Action Plan and Critical National Priority Projects

As stated above, governmental targets and intentions (including the Clean Power 2030 Action Plan) will be impacted if co-existence is not prioritised in line with the position set out by the Ørsted IPs, between existing and new assets. The Secretary of State recognises in the Clean Power 2030 Action Plan that new projects (such as the DBS Project) have an "*even greater propensity to cause wake effects on existing downstream operational projects*". This is a recognition by the Secretary of State that wake loss is even more significant than historically and reflects the fact that there are now a significant number of offshore wind farms (such as the Ørsted IPs' assets) which are high value receptors for new projects to consider.

The Ørsted IPs' assets are of high value and importance, being Nationally Significant Infrastructure Projects (and Critical National Priority projects, per NPS EN-3) making significant contributions to the government's policy objectives.

The Ørsted IPs believe that the developers of offshore wind farm projects competing in upcoming Allocation Rounds should ensure that the cost of wake loss mitigation (physical and/or financial) is reflected in Contract for Difference (**CfD**) bid prices. In conjunction with this, clear government policy is needed to provide these developers with certainty that the wake losses their projects will inevitably incur (from yet-to-be-leased offshore wind farms) will be fully mitigated through physical and/or financial means, as the UK builds-out towards circa 100 gigawatts (**GW**) of offshore wind installed across UK waters by 2050. Lease Round 4 Projects will both impose wake losses upon already-leased offshore wind farm projects and incur wake losses from future yet-to-be-leased projects; given that only circa 15 GW of offshore wind is currently installed across UK waters, it seems unlikely that the former will outweigh the latter. A clear requirement for incoming projects to mitigate wake losses (through physical and/or financial means) will result in the most efficient CfD bids, as it will avoid unnecessary risk premiums being priced-in to cover the hard-to-predict wake losses associated with future UK leasing rounds. Furthermore, this policy will actively incentivise the selection and development of sites that introduce the least wake losses.

The Crown Estate Leasing Process

The Ørsted IPs have set out their position regarding The Crown Estate (**TCE**) leasing process and the buffer distances across various submissions in the examination.

The Ørsted IPs provided a relevant TCE submission from the examination of the Outer Dowsing Offshore Wind (Generating Station) Project in Appendix 1 to the Ørsted IPs' Deadline 1 Submission, in which TCE state that "*the buffer/stand-off between wind farms (unless developers consent to closer proximity) is a separation distance to enable developers to develop, operate and maintain wind farms by allowing for a range of factors including amongst other matters, wake effects, navigation, and safety*". Furthermore, in that same submission, TCE stated that they "*acknowledge that inter-farm wake effects can extend beyond these buffer distances. TCE also notes that the spatial and temporal variability of wind speed means that it is complex to accurately predict the wake impact on nearby wind farms, which may depend on factors beyond distance – e.g. prevailing wind direction and wind farm layout*".

TCE set the buffer distances of 7.5km for Lease Round 4 Projects in 2019, prior to the evolution of the industry's understanding of far-field wake effects – the majority of the research provided by Ørsted on this issue is from the last 6 years (i.e. post-2019). Additionally, it is noted that in the last 6 years both Ørsted and RWE (two of the largest offshore wind operators in Europe), and in collaboration with DNV, have made public statements demonstrating that industry knowledge of

this issue is evolving considerably. In October 2019, Ørsted issued a market update (in relation to its long-term financial targets) communicating the true extent of far-field wake effects, which highlighted that the negative impacts of wake effect had been underestimated and which was provided at Appendix 3 to the Ørsted IPs' Deadline 7 Submission. Following this market update, further work was undertaken to understand the actual observed wake impacts, the results of which were presented by Ørsted in 2023. Following this, in 2024, RWE/DNV presented its own report regarding the implications of long-distance wake effects from large offshore clusters, which was provided at Appendix 4 to the Ørsted IPs' Deadline 7 Submission.

The Ørsted IPs note that compensation settlements covering wake losses, that are incurred both within and outwith TCE buffer zones, have been entered into on numerous occasions across UK waters. In each case, this outcome is both necessary and pragmatic. For wake losses incurred beyond TCE buffer distances, the existence of common ownership across waked and waking projects has, to date, typically driven pragmatic compensation outcomes. However, the UK offshore wind industry is currently grappling with a new situation whereby it has become apparent that five proposed Lease Round 4 Projects and one proposed 2017 Extension Round project will impose significant wake effects well beyond the buffer distances imposed by TCE while, at the same time, common ownership across these projects is not in place to drive pragmatic compensation outcomes. In lieu of this, protective provisions, such as those proposed by the Ørsted IPs, are necessary to safeguard the business cases of both existing (waked) and proposed (waking) offshore wind farms from future unmitigated wake loss impacts. Requiring wake loss mitigation and/or compensation, that protects the interests of waked projects that have been leased through earlier leasing rounds, is the only means of ensuring that wake loss impacts are accurately priced-in to consumer bills.

Weight

The Ørsted IPs' position is that the adverse effects to the Ørsted IPs' assets that continue to hold objections in relation to wake loss should be afforded substantial weight in the planning balance.

The Applicants have advanced a position that the adverse effects to the Ørsted IPs' assets should be afforded no more than limited weight in the planning balance. The Ørsted IPs wholeheartedly disagree with this conclusion, in the context of the current policy matrix and given precedent.

Protective Provisions

For the reasons set out above (namely the Applicants' failure to comply with NPS EN-3 and the likely significant negative effect identified in respect of the Ørsted IPs' assets as a result of the DBS Project), there is a clear requirement for protection of the Ørsted IPs' assets.

The Ørsted IPs' have set out the justification for the protective provisions that they have proposed throughout their submissions – these protective provisions are necessary, relevant to planning, relevant to the DBS Project, enforceable, precise, and reasonable in all other respects. One only has to consider the Ørsted IPs' analysis of the EIA 'limbs' considered by the Applicants and the appropriateness and justification of the protective provisions demonstrated by the figures in the Financial Impact Assessment at Appendix 1 to the Ørsted IPs' Deadline 7 Submission, alongside the fact that examples of compensation via such protective provisions (and alternative commitments made within Environmental Statements and other parts of DCOs) exist through the routine protection of, for example, fisheries and Network Rail.

The Applicants have not engaged with the Ørsted IPs on the protective provisions outside of the examination, and the Ørsted IPs responded to the Applicants' commentary on the protective provisions in full via the Ørsted IPs' Deadline 7 Submission, rebutting all of the Applicants' criticisms. This included reference to the fact that the protective provisions allow for an independent third-party expert assessment of the impacts at the point of design and the quantification of financial assessment. This ensures that, at the point of final design when the wake loss impacts are known, there is one assessment which addresses this impact. This approach is reasonable, and ensures that the Applicants are not exposed to a lump sum payment

in terms of compensation now (as had been sought by the waked party in the Awel y Mor examination). Instead, the protective provisions allow for an annualised payment (with further mitigation measures, such as design measures) considered at that point in time.

The Ørsted IPs submit that the protective provisions are included in the draft DCO in the form submitted by the Ørsted IPs (latest version in the Ørsted IPs' Deadline 6 Submission) and that without the inclusion of these protective provisions the DCO cannot be lawfully made.

Responses to the Applicants' Deadline 7 Submissions

As stated above, this submission does not purport to repeat, at length, the submissions made by the Ørsted IPs in this examination thus far (which address the majority of the points made by the Applicants in their Deadline 7 submissions). However, the Ørsted IPs wish to address the following matters directly.

In the Applicants' Responses to Deadline 6 Documents **[REP7-131]**, it is inferred that the Ørsted IPs did not seek financial compensation for their assets in relation to the Sheringham and Dudgeon Extension Projects because they did not consider that there was a need, or a reasonable prospect of, compensation (i.e. because these examinations took place before the Awel y Mor requirement came into existence). The Ørsted IPs note that in this case, and any other case that has not come before the planning system for public airing of the various viewpoints, it may be that private agreements were reached between the projects in questions. Due to the confidential nature of these agreements the Ørsted IPs cannot comment on this specific case except to reiterate that private agreements outside the planning system are the established norm for agreeing wake settlements. The Ørsted IPs have set out their position in relation to the appropriateness and precedence of compensation above (and in previous submissions).

In the same document, the Applicants also state that the Ørsted (West Coast) IPs have "*not sought protective provisions or a requirement in relation to the Mona or Morgan projects seeking financial compensation*". The Ørsted IPs note that this is solely due to different approaches taken by the developers of the Mona and Morgan projects. In contrast to this examination, the developers of the Mona and Morgan projects have – through their respective examinations and beyond – refused to either put forward wake loss assessments of their own, or to endorse the findings of the independent wake loss assessment that was commissioned and submitted by the Ørsted (West Coast) IPs. The Ørsted IPs have set out their position in relation to the appropriateness and justification of the protective provisions above (and in previous submissions).

The Applicants' Deadline 7 Wake Loss Submission **[REP7-136]** mostly relates to the Projcos' wake modelling and contains numerous points that the Ørsted IPs disagree with, but all of which the Ørsted IPs consider they have already rebutted in previous submissions. The Ørsted IPs note, though, that the Applicants have decided not to engage with the Ørsted IPs' previous criticisms of their mitigation conclusions, meaning they have not shown that mitigations are not possible for the DBS Project.

Cooperation Agreement with Orsted Hornsea Project Four Limited

In relation to the cooperation agreement between the Applicants and Orsted Hornsea Project Four Limited, the Ørsted IPs have confirmed to the Applicants that they still wish to progress with this agreement and therefore continue to await the provision of a draft of this agreement from the Applicants (which the Ørsted IPs understand will be based on the previously-agreed Heads of Terms between the parties).

Conclusion

For the reasons set out above and in previous submissions, the Ørsted IPs' assets require necessary and proportionate protection, in the form of the protective provisions submitted by the

Ørsted IPs (in the absence of engagement from the Applicants on a separate commercial agreement) that provide for appropriate and precedented compensation.