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Ørsted IPs – Deadline 9 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**). 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 comprises the Ørsted IPs' response to the Examining Authority's (**ExA**) request for further information under Rule 17 of the Infrastructure Planning (Examining Procedure) Rule 2010 (as amended) (the **Rule 17 Request**) in relation to the examination of the Dogger Bank South Offshore Wind Farm Project (the **DBS Project**). This submission also includes a final section containing the Ørsted IPs' comments on the Applicants' Deadline 8 submissions. Particularly in relation to that final section, this submission does not purport to repeat, at length, the submissions made by the Ørsted IPs in this examination thus far (as summarised in the Ørsted IPs' Closing Statement **[REP8-062]** – which, for clarity, the Ørsted IPs' position remains consistent with).

For ease of reference, the Ørsted IPs have structured this submission by following the same headings as found in the Ørsted IPs' Closing Statement **[REP8-062]**, in order to demonstrate that the Secretary of State's decision on the Mona Offshore Wind Farm in his letter dated 4 July 2025 (the **Mona Decision**) is an endorsement of the Ørsted IPs' consistent approach to the key matters in dispute in this examination which are addressed within that (noting that not all matters in dispute in this examination are expressly addressed in the Mona Decision).

National Planning Policy

The Ørsted IPs consider that the Mona Decision endorses the Ørsted IPs' position in this examination in respect of planning policy and demonstrates that the position that the Applicants have taken throughout this examination has been incorrect. The Ørsted IPs reiterate their position set out in the Ørsted IPs' Closing Statement **[REP8-062]** in respect of the application of the National Policy Statements (**NPS**) and their conclusions on compliance with the relevant NPS policies in this examination.

In section 96 of the Applicants' Closing Statements on Wake Effects **[REP8-049]**, the Applicants state that it "*was entirely reasonable for the Applicants to act in accordance with the accepted approach. It would be unreasonable for a retrospective standard to be applied*". This argument has never held any weight, and the Mona Decision demonstrates that the approach that the Applicants have taken has been wrong and that there is no retrospective standard being applied (only the correct standard, which the Applicants have chosen to ignore at their own risk).

At section 4.76 of the Mona Decision, the Secretary of State asserts that "*in the context of a policy in relation to impacts on other infrastructure, a project is unarguably "close" enough to be relevant if it is accepted that there is a direct physical impact on that project*". The physical impact in this case is the wake effect, which (as demonstrated in the Ørsted IPs' Closing Statement **[REP8-062]**) gives rise to total financial losses of between £84m and £295m across Hornsea 1, Hornsea 2 and Hornsea 3 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 Ørsted IPs' assets are clearly "*close*" in the context of policy, which is the position that the Ørsted IPs have promoted throughout the examination. This demonstrates that the Applicants have not complied with the relevant policy in this regard.

Section 4.78 of the Mona Decision reiterates the point made by the Ørsted IPs throughout this examination that draft NPS EN-3 has introduced additional wording to provide clarity given that

promoters have been contesting the existing policy and precedent. This is made clear in the Mona Decision, where the Secretary of State confirms that the policies in draft EN-3 have been introduced because "*such doubts were being expressed, not because he considers the existing policy allows Applicant's to ignore wake effects*". In relation to the weight to be afforded to draft NPS EN-3, this will depend on the stage that draft NPS EN-3 reaches when the decision on this application is made. The Ørsted IPs' position in relation to draft NPS EN-3 is set out in the Ørsted IPs' Closing Statement **[REP8-062]**.

Wake Loss Assessment

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 **[REP7-157]**. 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.

The Ørsted IPs do, however, wish to draw attention to two sections of the Mona Decision in relation to this matter. Firstly, section 4.79 of the Mona Decision is directly relevant to the Applicants' conduct in this examination, namely their refusal to engage on wake loss and their refusal to submit a wake loss assessment until it became clear that this may delay the examination. The Applicants should have submitted this assessment much earlier, as requested by the Ørsted IPs throughout this examination.

Furthermore, section 4.76(d) of the Mona Decision states that "*absence of an accepted industry standard model or methodology for carrying out a wake assessment does not mean that an acknowledged impact can simply be ignored*". The Applicants' approach has been contrary to this throughout this examination.

Significance and Impact

The Mona Decision endorses the Ørsted IPs' position in this application and demonstrates that the position that the Applicants have taken throughout this examination has been incorrect.

Paragraph 4.77 of the Mona Decision states that "*an acknowledged adverse environmental impact cannot be entirely ignored just because the understanding of that impact is new and evolving, or its exact impact is uncertain and not agreed. The Secretary of State is clear that this would be inconsistent with both NPS and EIA requirements*". This demonstrates that the Applicants' continued position that wake is not an environmental effect is not correct – the Mona Decision clearly confirms that wake is a planning matter and an environmental impact.

The Applicants' continued position that the impacts on the Ørsted IPs' assets are negligible can hold no weight in this examination. As spelt out in the Ørsted IPs' Closing Statement **[REP8-062]**, the 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. The Applicants have not demonstrated that the wake loss impacts are not significant in EIA terms.

Effect on Future Viability

In the Mona Decision, the ExA and the Secretary of State concluded that there would be no likely effect on the future viability of the relevant Ørsted projects. Unlike matters of policy, which have general application, this is a case-specific conclusion.

In this case, the Ørsted IPs' position, as set out in the Financial Impact Assessment at Appendix 1 to the Ørsted IPs' Deadline 7 Submission **[REP7-157]** (and alongside the material loss of value 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), is that 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.

The requirement in policy is for there to be a likely effect on future viability as a result of wake loss. There is no basis in policy to read this as wake loss being the only effect on future viability, or the determining effect on future viability. This is an altogether different test to that characterised by the Applicants, who continue to misunderstand paragraph 2.8.347 of NPS EN-3 by stating in their Closing Statements on Wake Effect **[REP8-049]** that "*it must be shown that "viability" is affected*" and that this is likely.

The impact on the Ørsted IPs' assets is demonstrably significant. Despite the fact that other factors will affect the future viability of the Ørsted IPs' assets, if the scale of the loss of revenue as a consequence of the wake loss meant that there was an effect on future viability, that would still mean that the policy is engaged. This is consistent with the approach to assessment of environmental issues and the application of principles such as cumulative effects.

Principle of Compensation

The Mona Decision does not expressly engage with compensation; however, nor does it reject the principle of compensation. The wording of Requirement 29(1)(b) of the Mona Offshore Wind Farm Order 2025 recognises that mitigation can be agreed (which is likely to take the form of compensation) and that it is appropriate to securing such a measure through a requirement.

This endorses the position in the Ørsted IPs' protective provisions, whereby mitigation is implemented by the Applicants and where compensation remains an appropriate form of mitigation itself.

The Applicants have not demonstrated that the payment of compensation would have consequences for them from a financial perspective. The Applicants can factor compensation – both compensation paid by them, and compensation likely to be paid to them (by future yet-to-be-leased offshore wind farm projects) – into their business case ahead of major financial milestones such as their Contract for Difference process in due course. The Applicants can also factor in design measures that are to be incorporated into their project design (should such measures come forward). The Ørsted IPs have demonstrated throughout that the balance of favour rests with the affected projects in this analysis.

Clean Power 2030 Action Plan and Critical National Priority Projects

As stated in the Ørsted IPs' Closing Statement **[REP8-062]**, the Clean Power 2030 Action Plan is a material consideration in this examination. Whilst the Mona Decision does not expressly address this, it does reference this publication in section 4.3 and states that regard has been had to it in making the decision.

The Crown Estate Leasing Process

The fact that the Mona Decision does not refer to The Crown Estate's (**TCE**) 7.5km buffer (which the Applicants have sought to rely on so heavily throughout this examination) is telling. The Ørsted IPs have, throughout various submissions in the examination and as summarised in the Ørsted IPs' Closing Statement **[REP8-062]**, articulated the appropriate limitations of this buffer distance.

Therefore, the lack of reference to this buffer distance in the Mona Decision is an endorsement of the Ørsted IPs' position.

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 upon 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 both established and recent precedent.

The Mona Decision places moderate weight on the impacts to the Ørsted IPs. As spelt out in the Ørsted IPs' Closing Statement **[REP8-062]**, the wake loss effects from the DBS Project on the Ørsted IPs' assets are likely to be major (significant) in EIA terms and therefore warrant mitigation and/or compensation. The Applicants have not demonstrated that the wake loss impacts are not significant in EIA terms, meaning that the Applicants' assessment of weight cannot be relied upon.

Protective Provisions

The Ørsted IPs' position continues to be that protective provisions remain appropriate for inclusion within the draft Development Consent Order (**DCO**) as the most appropriate form of protection for the Ørsted IPs' assets. This position is only enhanced by the Mona Decision.

At section 4.89 of the Mona Decision, the Secretary of State confirms that with the inclusion of Requirement 29 he "*is content that any further reasonable steps that can be taken to mitigate the severity of the impact of wake effects will be taken*". Without similar protection in favour of the Ørsted IPs' assets in this examination, which the Ørsted IPs have identified would be best secured through the protective provisions, the Secretary of State cannot reach the same conclusion. As a result, the Applicants' arguments against the inclusion of the protective provisions (or, indeed, a requirement in the draft DCO) should hold no weight in this examination.

Section 4.79 of the Mona Decision is directly relevant to the consideration of the protective provisions. The Secretary of State notes that "*this is an issue that should and could have been properly addressed during the examination by reasonable parties acting collaboratively, rather than adopting entrenched positions*". In this examination, the Applicants have been afforded the opportunity to engage and at their own risk they have adopted the type of entrenched and unreasonable position identified by the Secretary of State in the Mona Decision in electing not do so (either through the examination or through direct engagement with the Ørsted IPs).

The Applicants have not engaged on the protective provisions and (in spite of multiple requests) have not provided their own drafting; therefore, to the extent that they submit a form of draft protective provisions or a requirement at Deadline 9 of the examination, then notwithstanding the ExA's procedural letter dated 30 June 2025 **[PD-029]** the Ørsted IPs request that a further deadline is allowed in this examination for a response to any such drafting. The Ørsted IPs consider that it would be procedurally unfair to proceed to the recommendation stage without such an opportunity being afforded to them.

The Ørsted IPs' position remains that it would be irrational not to provide protection to the Ørsted IPs' assets, given the significant effects on these as a result of the DBS Project – it would, therefore, be unreasonable to not mitigate and/or compensate for these effects.

The imposition of the protective provisions sets a process for such mitigation to be deployed and, in the absence of such mitigation, for compensation to be secured through consideration of a wake loss assessment which is based on the final project design. This allows for greater certainty in relation to the assessment of the impacts when the final design is known and the quantification of compensation based on those impacts.

Requirement 29

The Ørsted IPs' preference remains for the protective provisions to be included in the draft DCO, instead of a requirement similar to that of Requirement 29 of the Mona Offshore Wind Farm Order 2025. The Ørsted IPs note that protective provisions were never discussed in the Mona examination; therefore, a requirement was the only form of drafting to address wake loss concerns that would ever have been included in the DCO. This, fundamentally, is due to the applicant in the Mona examination not undertaking a wake loss assessment. That is not the case in the examination of the DBS Project – the Applicants have (albeit at a late stage of the examination) undertaken a wake loss assessment that considers the impacts on the Ørsted IPs' assets, and therefore protective provisions have been introduced into the examination. Therefore, as set out above and in the Ørsted IPs' submissions throughout the examination, protective provisions are the most appropriate form of protection for the Ørsted IPs' assets.

The protective provisions put forward by the Ørsted IPs present a scenario in which the Applicants and the Ørsted IPs control the procedure to be followed (via the joint appointment of third-party experts and, indeed, the possibility of entering into a wake loss agreement instead). This is where the power (i.e. of assessment and agreement) has traditionally been placed in the industry and is, presumably, preferable to the Secretary of State holding this complex power and/or approval of a technical matter. In addition, the protective provisions contain the possibility of arbitration as a useful 'fall-back' position in the event of disagreement. These are, therefore, other advantages of the protective provisions over a requirement similar to that of Requirement 29 of the Mona Offshore Wind Farm Order 2025.

Without prejudice to the Ørsted IPs' position that the protective provisions are the most appropriate form of protection for the Ørsted IPs' assets, the Ørsted IPs have provided the following comments in the event that a requirement in the form of Requirement 29 in the Mona Offshore Wind Farm Order 2025 were to be included in the DCO for the DBS Project:

- The definition of "existing Ørsted offshore wind farms" at Requirement 29(4) should instead read as follows: "*means the Hornsea One Wind Farm, the Hornsea Two Offshore Wind Farm and the Hornsea Three Offshore Wind Farm*";

- Requirement 29(1)(b) would need to be subject to consultation with the Ørsted IPs as a minimum and be worded as follows (additions in red): "*A wake effects plan has been submitted to and approved by the Secretary of State following consultation with Hornsea 1 Limited, Breesea Limited, Optimus Wind Limited, Sonningmay Wind Limited, Soundmark Wind Limited and Orsted Hornsea Project Three (UK) Limited*"; and

- Requirement 29(1)(b) would need to be re-worded to ensure clarity that the agreement was with the owners of the respective wind farms as follows (additions in red): "*The undertaker has provided evidence to the Secretary of State that alternative mitigation for wake effects has been agreed with each of the owners of the existing Ørsted offshore wind farms*".

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Responses to the Applicants' Deadline 8 Submissions

The Ørsted IPs consider that the points made by the Applicants in their Deadline 8 submissions have been addressed in the submissions made by the Ørsted IPs in this examination thus far (as summarised in the Ørsted IPs' Closing Statement **[REP8-062]** – which, for clarity, the Ørsted IPs' position remains consistent with).

The Ørsted IPs do wish to note, however, that the Applicants have still not undertaken sufficient work to demonstrate that mitigation in respect of the impacts of the DBS Project could not be deployed in order to minimise the impacts on the Ørsted IPs' assets. The Applicants have relied upon studies of hypothetical scenarios or studies on other offshore wind farms, instead of undertaking a site-specific assessment.

Conclusion

The Ørsted IPs' position remains that there is an adverse effect on the Ørsted IPs' assets, which attracts substantial weight in the decision-making process per the correct interpretation of policy.

The Ørsted IPs submit that the protective provisions are included in the form submitted by the Ørsted IPs in their Deadline 6 Submission **[REP6-085]** in any form of the DCO that is granted for the DBS Project, and that without the inclusion of these protective provisions the DCO cannot be lawfully made.

The Ørsted IPs' position is that the Mona Decision supports their position. No weight can credibly be placed on the Applicants' interpretation of any element of the current NPS or the draft NPS as it relates to wake effects. This extends to the Applicants' approach to the application of weight to be afforded to the adverse impacts caused to the Ørsted IPs' assets, the mitigation hierarchy and their position in respect of both protective provisions and compensation.

The approach to the imposition of protective provisions and compensation is based on correct policy analysis by the Ørsted IPs. In this respect, the ExA will form its own view, but it is important to note that the Secretary of State (at section 4.77 of the Mona Decision) characterises wake loss as "*an acknowledged adverse environmental impact*".