

## Ørsted IPs' – Response to Rfl

### Introduction

This submission is made on behalf of Hornsea 1 Limited, the collective of Breesea Limited, Soundmark Wind Limited, Sonningmay 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 Dogger Bank South Offshore Wind Farm Project (the “**DBS Project**”) relating to wake loss.

The Ørsted IPs note that the Secretary of State has issued a Request for Information dated 16 January 2026 (the “**Rfl**”). The Rfl, at paragraphs 4-8, invites the Ørsted IPs to provide an update on its engagement with the Applicants for the DBS Project, including in the context of paragraphs 2.8.232-2.8.233 of the new National Policy Statement for Renewable Energy Infrastructure (“**NPS EN-3**”). This submission comprises the Ørsted IPs’ response to those matters only.

From the outset, the Ørsted IPs wish to reiterate that the protective provisions submitted by the Ørsted IPs in their Deadline 6 Submission [**REP6-085**]<sup>1</sup> represent a fair, proportionate, and policy-compliant solution to inter-project wake loss impacts – therefore, these protective provisions remain the Ørsted IPs’ strong preference for inclusion in the Development Consent Order (“**DCO**”) for the DBS Project.

### Engagement

The Ørsted IPs will address the points relating to the new NPS EN-3 in the subsequent section, but note that the Rfl asks, in relation to engagement, for an update on “*any areas of agreement that may have been reached, any matters that remain under consideration, and the anticipated next steps and indicative timescales for the continuation or conclusion of discussions*”. The Ørsted IPs address the contents of this request in turn.

Firstly, whilst there has been some limited engagement between the Applicants and the Ørsted IPs, there has been no substantive engagement since 15 December 2025 and no areas of agreement have been reached.

Indeed, as stated in the Ørsted IPs’ Closing Statement [**REP8-062**], it remains the case that 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 implementation 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. This is in conflict with the principle in paragraph 2.8.344 of the current NPS EN-3, which is the policy document with which the DBS Project must comply.

Therefore, and in relation to the second limb of the Rfl request regarding engagement, the Ørsted IPs consider that all matters remain under consideration in the absence of any substantive engagement. The Ørsted IPs are open to further engagement with the Applicants, should they wish to engage in a meaningful manner.

Lastly, and again due to the lack of substantive engagement from the Applicants, the Ørsted IPs cannot provide any timescales for the continuation or conclusion of discussions. The Ørsted IPs are not in a position to withdraw their objection to the DBS Project, though (as stated above) they are open to meaningful engagement with the Applicants. The Ørsted IPs also note that they would

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<sup>1</sup> The terms ‘Wake Loss Mitigation Scheme’ and ‘Wake Loss Assessment’ are used in this submission – these terms have the same meaning as defined in the protective provisions submitted by the Ørsted IPs in [**REP6-085**].

be able to withdraw their objection if the protective provisions submitted by the Ørsted IPs in their Deadline 6 Submission [REP6-085] are included on the face of the DCO for the DBS Project. The Applicants have not engaged on these protective provisions and the Ørsted IPs would encourage the Secretary of State to request that they do so, in the manner that has been seen in the post-examination period of the Outer Dowsing Offshore Wind Project (where protective provisions have been put forward by the Ørsted IPs and the Equinor IPs) and as is standard for any DCO examination where protective provisions are submitted by Interested Parties.

Indeed, the Ørsted IPs note that the Applicants' approach to engagement for the DBS Project is contrary to that seen in the examination of several recent offshore wind project DCOs. In relation to the Mona Offshore Wind Farm Order 2025 ("Mona DCO"), the Morecambe Offshore Windfarm Generation Assets Order 2025 ("Morecambe DCO") and the Morgan Offshore Wind Project Generation Assets Order 2025, the various applicants have been reported to have reached agreement directly with affected parties (either on a full basis, or at least on the wording of a requirement for inclusion on the face of the DCO).

### **Policy**

The Rfl asks the Ørsted IPs to have regard to paragraphs 2.8.232 and 2.8.233 of the new NPS EN-3 in this response. The Ørsted IPs will address these paragraphs in turn, but first wish to reiterate that this new policy document is only a potential consideration in the determination of the DBS Project, which remains subject to the existing NPS EN-3.

#### Paragraph 2.8.232

Paragraph 2.8.232 of the new NPS EN-3 states that "*Applicants should demonstrate that they have made reasonable endeavours to mitigate the impact of wake effects on other offshore wind generating stations*". As stated above, the Ørsted IPs do not consider that the Applicants have in any way worked with the Ørsted IPs during the evolution of the DBS Project such that they can assert that this paragraph of the new NPS EN-3 has been complied with. The Applicants have not engaged in any discussions regarding the application of mitigation, furthermore no reasonable endeavours that demonstrate a commitment to implementing mitigation have been made or proposed – therefore, it cannot be said that the Applicants have made reasonable endeavours to mitigate impacts. In relation to the Applicants' assessment of whether mitigation is possible, the Ørsted IPs refer back to their criticisms of the Applicant's submissions on this topic made throughout the examination, most notably on pages 9-11 of [REP6-085].

The mitigation referred to in paragraph 2.8.232 can be secured via protective provisions, with independent third-party experts determining the accuracy, or 'reasonableness', of the post-mitigation Wake Loss Assessment and of any Wake Loss Mitigation Scheme that may be required.

#### Paragraph 2.8.233

Paragraph 2.8.233 of the new NPS EN-3 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). Firstly, the Ørsted IPs note that the protective provisions proposed do not necessitate that wake effects are "*wholly removed*"; rather, they allow for appropriate physical mitigation and/or compensation for wake effects. The wording of paragraph 2.8.233 does not account for a scenario whereby there is zero mitigation necessary for a project; therefore, it is clear that the intention remains for wake effects to be addressed (albeit that physical wake effects are not expected to be "*wholly removed*"). This is exactly what is achieved via the proposed protective provisions.

Accordingly, whilst paragraph 2.8.233 clarifies that inter-project compensation is not mandated in every case, it does not remove the need for effective, enforceable mechanisms to address residual wake effects where physical mitigation does not fully avoid impacts. In the absence of

agreement between the Applicants and the Ørsted IPs, the protective provisions proposed provide a proportionate and policy-compliant means of ensuring that such residual impacts are sufficiently assessed and addressed.

In addition, the new NPS EN-3 deliberately stops short of precluding the type of inter-project compensation arrangements that underpin the protective provisions proposed by the Ørsted IPs. Indeed, the Government document entitled 'Consultation Response - Planning for New Energy Infrastructure - 2025 revisions to National Policy Statements for energy infrastructure' that accompanied the updated draft of NPS EN-3 states that "*wake effects are a commercial matter to be resolved between developers*", confirming that commercial arrangements, including compensation, are a valid means of addressing economic loss incurred as a result of wake effects. The option of inter-project compensation arrangements made available through the proposed protective provisions provides a reasonable and proportionate means of addressing wake effects, either in full, or with respect to any residual wake effects that remain following the implementation of physical mitigation measures, applied at the Applicants' discretion. The Ørsted IPs refer to paragraph 21 of the legal opinion from Richard Turney KC (the "**KC Opinion**") appended to the recent submission from 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 [**C1-022**], which states that "*it is not the case that "proposed paragraph 2.8.233 of draft EN-3<sup>2</sup> should be read as precluding mitigation of economic loss through compensation"*". The Ørsted IPs have set out in detail their position regarding the appropriateness of compensation proposed by the protective provisions in various submissions, most notably in Ørsted IPs' Closing Statement [**REP8-062**], the Ørsted IPs' Deadline 9 Submission [**REP9-034**] and the Ørsted IPs' most recent submission [**C1-019**], and do not propose to repeat these submissions in full.

In this context, the Ørsted IPs note that it is clearly the case that DCO requirements imposed in recently-made offshore wind DCOs (such as Requirement 29 of the Mona DCO and Requirement 13 of the Morecambe DCO) do effectively leave the planning system (and, more specifically, the Secretary of State in his discharge of wake requirements) as the adjudicator on mitigation arrangements overall. Paragraph 1(a) in each of the requirements in the Mona DCO and Morecambe DCO provides for mitigation through wake minimisation steps, whereas paragraph 1(b) provides for (but does not necessitate) mitigation through alternative means, including compensation. The Secretary of State is not required to adjudicate on the specific content of any compensation arrangements that may be agreed pursuant to paragraph 1(b); however, the undertaker must evidence the existence of any such agreement if discharge is to be secured pursuant to that agreement.

## **Conclusion**

The Ørsted IPs are open to meaningful further engagement with the Applicants in relation to the DBS Project. In the absence of such engagement, the Ørsted IPs consider that appropriate protection must be secured through the DCO and request that they are given the opportunity by the Secretary of State to respond to any further submissions made by the Applicants (including in response to this RfI) via future RfIs before the DCO is determined.

One only has to look at the assets of the Ørsted West Coast IPs<sup>3</sup> (which are protected by requirements on the face of the Mona DCO and the Morecambe DCO) as examples of protective precedent that should be followed. If the DCO for the DBS Project was granted without any protection on its face for the Ørsted IPs that continue to hold objections in relation to wake loss, that outcome would be unacceptable to the Ørsted IPs – indeed, the Ørsted IPs consider it would be unreasonable and irrational for the Secretary of State to reach such a decision.

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<sup>2</sup> N.B. At the time the KC Opinion was procured, the new NPS EN-3 was in draft form and not designated. The wording analysed remains the same post-designation with regard to this paragraph.

<sup>3</sup> The Ørsted West Coast IPs are a group of six owners of offshore windfarms on the West Coast of the UK, within the East Irish Sea, comprised of Barrow Offshore Wind Limited, Burbo Extension Ltd, Walney Extension Limited, Morecambe Wind Limited, Walney (UK) Offshore Windfarms Limited and Ørsted Burbo (UK).