

6 MARCH 2026

DOGGER BANK SOUTH OFFSHORE WIND FARM PROJECTS (DBS PROJECTS)

**RESPONSE TO THE SECRETARY OF STATE'S THIRD CONSULTATION DATED 5
FEBRUARY 2026**

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**

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SECRETARY OF STATE'S THIRD CONSULTATION

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

1. INTRODUCTION

- 1.1 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**).
- 1.2 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.
- 1.3 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**).
- 1.4 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 commences.
- 1.5 DBA Projco, DBB Projco and DBC Projco (together the **Projco IPs**) submitted a consultation response on 6 December 2025 (the **Projco IPs' First Consultation Response**) in response to the Secretary of State's first consultation letter dated 6 November 2025 (the **First Consultation**).
- 1.6 The Projco IPs submitted a consultation response on 30 January 2026 (the **Projco IPs' Second Consultation Response**) in response to the Secretary of State's second consultation letter dated 16 January 2026 (the **Second Consultation**) in respect of the National Policy Statements (**NPS**) designated on 6 January 2025 (the **2025 NPS**) which consider the current NPSs (the **2024 NPS**) and the supplementary guidance for renewable energy infrastructure (EN-3): Offshore wind wake effects (the **EN-3 Guidance**) which accompanies the 2025 NPSs.
- 1.7 The Projco IPs are making this submission in response to the Secretary of State's letter dated 5 February 2026 (the **Third Consultation Letter**). The Third Consultation Letter seeks comments on documentation submitted at the decision stage.

2. EXECUTIVE SUMMARY

- 2.1 In respect of wake matters, the Projco IPs' position remains as summarised in the Projco IPs' closing statement at Deadline 8 (REP8-059) (the **Projcos' Closing Statement**) and its response to the rule 17 letter submitted at Deadline 9 (REP9-033) (the **Projcos' Deadline 9 Response**).
- 2.2 At no stage does Appendix A demonstrate that the wake effects of the Projects on DBA, DBB and DBC have been considered in the design of the Projects and Appendix A does not demonstrate: any endeavours (let alone reasonable endeavours) to mitigate the impact of wake

effects on DBA, DBB and DBC as required by Policy 2.8.232 of the 2025 NPS. The Applicant relies on Appendix A to demonstrate that it has satisfied Paragraph 2.8.232 and 2.8.233 of the 2025 NPS EN-3, and its case must fail.

- 2.3 The Applicant's application documents demonstrate the complete absence of consideration of wake effects of the Projects on DBA, DBB and DBC in site selection and EIA design.
- 2.4 The Applicant's comments and submissions to the examination demonstrate the complete absence of consideration of wake effects from the projects on DBA, DBB and DBC.
- 2.5 The lack of engagement is reflected by the Applicants, who state at Paragraph 27 of the Applicant's Second Consultation Response that they "*have sought to engage with the Projcos and Ørsted in relation to wake matters, during the latter part of the Examination and subsequently*". As is clear from the Secretary of State's decision letter in respect of the Outer Dowsing Offshore Wind Farm dated 10 February 2026 (the **Outer Dowsing Decision Letter**) that is too late, and as is clear that has not been substantive engagement. Appendix A does not demonstrate any attempts by the Applicant at engagement with the Projco IPs in respect of wake effects.
- 2.6 The Applicant's position in respect of wake effects is underpinned by its continued position that compensation does not apply to wake effects. The Projco IPs have consistently made the point that the mitigation hierarchy should apply, and this is consistent with the Secretary of State's conclusion at Section 4.83 of the Outer Dowsing Decision Letter. The Secretary of State has recognised the requirement to "*avoid, reduce, mitigate or compensate for wake effects as set out in the 2024 NPS (paragraphs 2.8.213 to 2.8.217) or 2025 (paragraphs 2.8.186 to 2.8.190) NPSs*" at Section 4.88 of the Outer Dowsing Decision Letter. The Applicant's position in respect of compensation is untenable.
- 2.7 The Projco IPs have established that the impact on DBA, DBB and DBC is significant in EIA terms and is of a magnitude greater than the impact of other recently consented offshore wind in terms of wake effect. This is demonstrated again in this response, and the Projco IPs' position is that substantial weight must be afforded to those impacts.
- 2.8 The Projco IPs have demonstrated a likely affect on the future viability of DBA, DBB and DBC. The Applicant's position in respect of viability is flawed and is, again, based on a mischaracterisation of the relevant policy.
- 2.9 The Applicant's position is that there is no mitigation that can be applied to reduce this impact such that it does not give rise to significant effects. Given this, that leaves compensation as the matter to address the significant impact on DBA, DBB and DBC. The Secretary of State has recognised in the Outer Dowsing Decision Letter that there is a requirement to mitigate or compensate for wake effects as set out in the 2024 NPS. The Applicant has not identified any alternative means of compensation to that provided for by the Projco IPs in the protective provisions.
- 2.10 The Applicant's position that compensation cannot be included in a requirement is incorrect, but even if it were correct this could be overcome through the use of a protective provision (as advocated for by the Projco IPs) or an article to the Order itself so this argument is not of importance to the Secretary of State's decision.
- 2.11 The Applicant's position that there is no precedent in protective provisions is incorrect; there is substantially similar protection for offshore oil and gas operators in the recently made Parts 3 and 4 of Schedule 3 to The Morecambe Offshore Windfarm Generation Assets Order and its own draft DCO includes a protective provision which provides for compensation through loss of

revenue in respect of other matters. To date, there has only been one other examination where the Secretary of State had to consider protective provisions or a requirement, being Outer Dowsing. The Projco IPs have demonstrated why the impacts of the Projects on DBA, DBB and DBC are greater than those in Outer Dowsing (and all other previous projects) such that the use of protective provisions should be applied in this case.

- 2.12 The 2025 NPS does not assist the Applicant, because the Applicant (as with the applicant in the Outer Dowsing examination) cannot demonstrate compliance with the 2025 NPS.
- 2.13 The Projco IPs' position is that Secretary of State must conclude that the adverse effects on DBA, DBB and DBC are significant in EIA terms, that there is a likely affect on the future viability of DBA, DBB and DBC and that the weight to be afforded to these adverse effects is substantial. The Projco IPs' position is then that the Secretary of State must include the protective provisions in favour of DBA, DBB and DBC.
- 2.14 As set out in Section 13 of the Projco IPs' Closing Statement, 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. The protective provisions set a clear process which is based on the point of final design. This approach is reasonable, ensures that the Applicant is not exposed to a lump sum payment in terms of compensation now and allows for further mitigation measures such as design measures to be taken into account at that point in time.
- 2.15 If the Secretary of State were to conclude that a requirement were necessary, then the Projco IPs' position is that the form of the requirement that the Secretary of State should impose is included at Appendix 2 of the Projco IPs' First Consultation Response.
- 2.16 The Projco IPs' overall position remains aligned with the Ørsted IPs' in respect of the key principles and the approach to resolution of the impacts of wake effects on their respective assets.
- 2.17 This consultation response has received input from Richard Turney KC.

3. APPENDIX A

- 3.1 Appendix A comprises new information submitted in a purported attempt to demonstrate that wake effects on DBA, DBB and DBC have been considered in the design process of the Projects.
- 3.2 On the Applicant's case, it relies on Appendix A to demonstrate its purported compliance with Paragraph 2.8.232 and 2.8.233 of the 2025 NPS EN-3. The Applicant states at:
 - 3.2.1 Paragraph 3 of Appendix A that:
 - (a) **“This document** (together with [REP4-099], [REP8-038], [AS-179], the Applicants' closing statements on wake effects [REP8-046] and the Applicants' response to the Mona DCO decision with regards to wake effects [REP9-024]) **set out how the DBS design process has met the requirements laid out in the new NPS EN-3 2025”** and
 - (b) **“This document** thus fulfils the requirement of 2.8.232 and 2.8.233 of the NPS”;
 - 3.2.2 Paragraph 27i of the Applicant's Second Consultation Response that: *“Appendix A is included to help the Secretary of State apply the new policy under EN-3 2025 to demonstrate the full extent of the reasonable steps which the Applicants have taken to mitigate wake effects”*.

- 3.3 It is plainly unacceptable for an Applicant in a DCO examination to rely on a new document to seek to substantively justify policy compliance where that new document is submitted circa six months after the close of the DCO examination in response to a specific consultation in respect of engagement. The need for the Applicant to do so demonstrates that, until this date, on its own case it cannot be said to have satisfied the policy tests.
- 3.4 Appendix A (save for section 5.1, which refers to the measures that the Applicant identified as possible future mitigation measures in REP7-136 and REP4-099) comprises some material new information which: 1) was not submitted as part of the Application or the examination of the Application; 2) was not included in the Application documentation; 3) is not reflected by the examination documentation; and 4) was not provided by the Applicant to nor discussed with the Projco IPs, in spite of the Projco IPs attempt to engage on the subject matter. Appendix A also represents a material change in the way in which the Applicant has purported to present its consideration of wake effects on DBA, DBB and DBC as part of the design process.
- 3.5 Appendix A appears to be an artificial attempt by the Applicant to retrospectively demonstrate that wake effects have been a consideration in the design of the Projects in order to try and demonstrate compliance with policy in the 2025 NPS.
- 3.6 Most importantly, Appendix A is directly contradictory to and contradicted by the information submitted by the Applicant throughout the examination of the Projects when questioned about the extent to which it had considered wake effects on DBA, DBB and DBC in the design process.
- 3.7 The Applicant’s actual approach to wake effects on DBA, DBB and DBC through the design process is best summarised by the Applicant’s own submissions on these points in response to specific action points and questions raised during the examination of the Project:
- 3.7.1 The Applicant stated in its statement on Agenda Item 2: Infrastructure and Other Uses in document AS-155 that:
- “Potential wake effects from a new project on an existing project (or consented project) have not been taken into account in the design of the new project. This has been standard industry practice. This reflects the common industry acceptance that each project would maximise its AEP and that the question of wake effects as between new and existing projects was a matter for The Crown Estate (TCE) in setting the buffer distance for each new licensing round for such new projects. As a result, offshore wind farm design has never sought to take wake effects on other projects into account. The only exception to this has been where a new project sought to be located inside the relevant TCE buffer distance”*; and
- “there is no generally accepted way of conducting wake assessments and no accepted suite of measures for designing a new wind farm to reduce the wake effects on another wind farm”*.
- 3.7.2 The Applicant stated in its response to ExAQ1 IOU.1.5 (REP3-027) that:
- “Not only is it silent on this (as is the entire EN-3) but it urges developers to maximise their capacity (which in any event is normal practice i.e. offshore wind farms have always been designed to maximise capacity without regard to other projects (save where they were within a TCE buffer requiring commercial agreement).”*
- 3.7.3 The Applicant stated in its response to ExAQ1 IOU.1.6 (REP3-027) that:
- “Second, that it is generally known and accepted that when designing a new offshore wind farm it is standard practice for developers not to take into account wake effects*

*on other projects (Save where a site is inside a TCE buffer and agreement is required). The design of new projects to maximise Annual Energy Production (AEP) is fundamental to the commercial case for a new project. It is a complex technical issue balancing a range of considerations. **If mitigation of wake effects on other wind farms were introduced as a new consideration that would be a major change**".*

- 3.7.4 The Applicant stated in The Applicants' Responses to Deadline 1 Documents (Revision 1) (REP2-058):
- "Where a new project was proposed outside the buffer distance, then the project specific wake effects of the proposed project (along with other matters) **have been taken into account, by respecting that buffer**. The fixing of the buffer distance has always been made in the knowledge that there may be wake effects beyond the buffer. Such projects have then been designed, in the usual way, to maximise AEP, **without further consideration of the wake effects on the existing project**".*
- 3.8 These statements, consistent with the application materials, demonstrate that wake effects of DBS on DBA, DBB and DBC have not been a factor in the design process of the Projects.
- 3.9 The Applicant made these statements in January 2025 and March 2025 in response to submissions raised by the Projco IPs and questions raised by the ExA, and this reflects the Applicant's approach to wake loss throughout the examination of the Projects until Deadline 4, although the documents submitted to the examination REP7-136 and REP4-099 do not address the early stage of design (which Appendix A purports to do) but instead seek to address a series of non-site specific potential future mitigations based on the future design at the post-Application stage.
- 3.10 This approach is reiterated at the outset of Appendix A, where the Applicant states that: *"DBS has been designed under the regime and requirements of NPS EN-3 2024 which did not explicitly require consideration of wake (and historically wind farms have not considered wake during EIA or the DCO process)".* As has been established through the examination of the Projects and various Secretary of State decisions, this approach is because of the Applicant's interpretation of the law and policy as opposed to way that law and policy has been applied by the Secretary of State.
- 3.11 The Applicant's approach to wake effects during the examination of the Projects demonstrates that the Applicant has not made reasonable endeavours to mitigate the impact of wake effects on DBA, DBB or DBC.
- 3.12 This is addressed in detail below, but given that the Applicant's use of Appendix A is in direct contradiction to the statements by the Applicant about its approach in the examination it is clear that Appendix A (as with the Applicant's previous approach to the applicability of the 2024 NPS to wake loss during examination) must be treated with extreme caution by the Secretary of State. Appendix A has not been tested through examination, and is in direct contradiction to the Applicant's position on the design process for the Projects and the offshore wind industry.
- 3.13 Whilst the Applicant states in its conclusion that *"when a design decision has been in the control of the DBS project, it has been made with reduction of wake impact as one of the designing factors"* this appears to be very carefully crafted wording, but wording which does not address the policy tests that the Secretary of State is concerned with. This is reflected in Paragraph 6, which in effect identifies that to the extent that wake has been considered in the design process it is through consideration of wake effects on DBS (and not of DBS on neighbouring projects). This does not assist in the discharge of the 2025 NPS and appears misleading.

- 3.14 What the Applicant has presented at Appendix A is, at its highest, a document which reports on consequential impacts of the exercise that it has undertaken to maximise the generating capacity of the Projects. It does not demonstrate a consideration of the impact of the Projects on DBA, DBB and DBC during the design stage or reasonable endeavours (or indeed, any endeavours) to mitigate the impact of the Projects on DBA, DBB and DBC.
- 3.15 For the actual approach that the Applicant has actually taken in respect of wake effects, the Secretary of State is directed to the statements made and highlighted at Section 3.7 above.
- 3.16 It is also important to note that the Secretary of State did not invite new evidence in the Second Consultation Letter. The Secretary of State requested an update on engagement, with that update on engagement having regard to the relevant policies. Appendix A does not contain any update in respect of such engagement because there has been no such engagement by the Applicant.
- 3.17 In respect of the various points made in Appendix A, the Projco IPs respond below.

Section 2: Wake as a Design Driver / Section 3: Design Constraints

- 3.18 The closest that the Applicant comes to identifying a methodology for addressing wake effects as a design driver is at Paragraph 6 of Appendix A where the Applicant states that: “*the most effective approach to mitigate wake is to move the wind farms as far apart as possible*”.
- 3.19 There is no evidence that this “*most effective approach*” has been followed in the design process for the Projects presented within Appendix A. In respect of DBA, the position is fundamentally the opposite and the Projects are almost as close as possible to DBA within the confines of the 7.5km TCE buffer and directly upwind of DBA, DBB and DBC considering the prevailing wind direction identified in Plate 4.1.
- 3.20 The reference to wake as a design driver is clearly driven by wake effects as they would occur on the Projects. This is not relevant for the purposes of the 2025 NPS policies which Appendix A purports to address and which require mitigation of the wake effects on DBA, DBB and DBC.
- 3.21 Section 4.7 of the Environmental Statement Volume 7 Chapter 4 – Site Selection & Assessment of Alternative (Revision 3) (REP7-029) addresses the site selection process including the refinement of the array areas. In this document, Table 4-4 identifies the engineering constraints considered in the assessment and Table 4-5 identifies the potential risks of the original array areas to relevant environmental receptors. This demonstrates the exhaustive list of factors considered in array refinement, as well as the mitigation measures considered in respect of those matters. Wake is not one of the exhaustive list of factors considered in the environmental statement, neither is the impact of the Projects on neighbours. Siting the Projects as far apart as possible is not captured as an objective of design.
- 3.22 This does not demonstrate any attempt to mitigate impacts on DBA, DBB and DBC.

Section 4.1: TCE Buffer

- 3.23 This is a TCE matter which the Projects had to respect. As set out in the Projco IPs’ Closing Statement, Deadline 5 Submission and Deadline 6 Submission, The Crown Estate Leasing process is a separate process.

Section 4.2.1: Round 4 Bid and Selection of General Location

- 3.24 The Dogger Bank zone comprised a wide Bidding Area (see Appendix 1), and there is no evidence presented at section 4.2.1 that wake effects on DBA, DBB or DBC were taken into account in the selection of a general location nor is there any evidence of consideration of alternative sites.

- 3.25 Paragraph 17 identifies the considerations that the Applicant's did take to identifying their bid area within this wider Bidding Area: "*bids were developed targeting: deliverable projects; with maximum yield; at the lowest cost*". Wake effects on neighbouring projects are not identified as a consideration in this section of Appendix A, and there is no evidence of an objective assessment or a methodology that included consideration of wake effects on DBA, DBB or DBC at this stage.
- 3.26 Paragraph 18 identifies that there were, in fact, a number of site alternatives to the north (which do not appear to have been considered or formally discounted) but does not demonstrate that wake effects were taken into account as a determining factor in choosing between these options. Whilst the Applicant does not address these alternatives, it appears to the Projco IPs that wake effects on the Projects are likely to have been the driver for the location towards the south of the Dogger Bank Zone as opposed to the north of the Dogger Bank Zone (i.e. due to the prevailing wind direction shown on the plates in Appendix A, if the Projects had been situated to the north of the Dogger Bank Zone they would have been subject to the significant adverse wake effects from DBA, DDB and DBC that they cause to DBA, DBB and DBC through their actual location). The Applicant does not address this in their analysis of the selection of the southern area rather than the north, and so this section does not demonstrate any attempt at mitigating wake effects on DBA, DBB or DBC. All this Paragraph does is introduce the existence of alternatives which based on the prevailing wind direction would be expected to have less of an impact on DBA, DBB and DBC without any evidence as to how or why those alternatives were discounted.
- 3.27 The conclusion at Paragraph 21 is that the Applicants have chosen an area that the Projco IPs should somehow have been aware of despite the Projco IPs having no knowledge of decisions on the Project at this stage. This does not demonstrate a good neighbour approach or any attempt to mitigate effects on DBA, DBB and DBC and instead seeks to place the onus on the Projco IPs. The Projco IPs have already addressed this point and the relevant timeframe in evidence to the examination: see the comments on the response to ExAQ2 IOU.2.13 at Appendix 2 to the Deadline 7 Submissions (REP7-139).

Section 4.2.2: Bid Configuration

- 3.28 It is not clear whether these alternative configurations were actually considered at the Round 4 Bid stage or in project design, or are now being retrospectively introduced so as to curate the appearance of an iterative design that has considered wake loss by introducing selected scenarios (in the vicinity of but outside of the final lease area, and not in the entire Round 4 bid area). The language at Paragraph 25 suggests that it is the latter, and that what is presented at Section 4.2.2 of Appendix A is a retrospective analysis of layouts in the vicinity of the lease area (as opposed to alternatives which were considered at the time of the bid) in an attempt to show that there may be worse impacts as opposed to a reasonable endeavour to mitigate the impact of wake effects as required by Paragraph 2.8.232 of the 2025 NPS EN-3.
- 3.29 Therefore, what is presented here is either: 1) not a genuine or reasonable alternative which has been considered as part of an iterative design process; or 2) if it is, is omitted completely from the Application documentation such that the assessment of site selection and alternatives in the Environmental Statement is incomplete and does not allow for a reasoned conclusion.
- 3.30 Regardless of the above, Appendix A does not present a methodology or an assessment or quantitative analysis which allows an objective reader such as the Secretary of State to understand the comparative impacts in terms of wake effects or impacts on Annual Energy Production in respect of DBA, DBB or DBC as a consequence of these apparently retrofitted alternatives. It is simply not possible for such a reader to reach the conclusions presented at Paragraph 31.

3.31 This is particularly the case given that there is no clear methodology presented and that the Applicant identifies two criteria (which are as close to a methodology as it gets in Appendix A) at Paragraph 30 of Appendix A which are that the design selected should:

3.31.1 *“Reduce the overall impact of DBS on all relevant wind farms; or*

3.31.2 *Reduce the impact of DBS on the most affected wind farms; the wind farms which could most plausibly be significantly impacted”.*

3.32 These two criteria: 1) do not mirror its key test identified at Paragraph 6 of Appendix A that *“the most effective approach to mitigate wake is to move the wind farms as far apart as possible”*; and 2) are clearly not met in this case, given that the preceding Paragraph of Appendix A (Paragraph 29) identifies that in respect of some of the wind farms the changes give rise to positive effects.

3.33 This is a retrospective analysis which has been presented for the first time at Appendix A and it does not demonstrate any attempt through the design process to mitigate impacts on DBA, DBB and DBC.

Section 4.3: Design Changes in EIA, Wind Farm Array Layout Design and Resulting Design

3.34 The Applicant states at Paragraph 39 of Appendix A that: *“As is clear, at all stages the impact of DBS on neighbours has been considered amongst the significant number of other design drivers”*.

3.35 This is not apparent from any of the Application documents or the Applicant’s approach to design during the examination, and the approach that the Applicant has actually taken to design changes in the EIA process including in respect of the wind farm array layout is set out in its application documents.

3.36 Section 4.7 of the Environmental Statement Volume 7 Chapter 4 – Site Selection & Assessment of Alternative (Revision 3) (REP7-029) addresses the site selection process including the refinement of the array areas. In this document, Table 4-4 identifies the engineering constraints considered in the assessment and Table 4-5 identifies the potential risks of the original array areas to relevant environmental receptors. This demonstrates the exhaustive list of factors considered in array refinement, as well as the mitigation measures considered in respect of those matters.

3.37 Wake is not one of the exhaustive list of factors considered in the environmental statement, neither is the impact of DBS on neighbours.

3.38 This is also apparent from the Environmental Statement Volume 7 Chapter 16 – Infrastructure and Other Users (Revision 4) (REP7-060), where the impact on neighbouring projects including offshore wind farms and where the impact of wake loss on DBA, DBB and DBC is not considered notwithstanding that the potential interference with other wind farms during the operational phase was scoped into the EIA process by the Applicant.

3.39 To the extent that information is now submitted in respect of alternatives, it falls short of the requirements of the EIA Regulations and to the extent it has been a consideration which is not reported on in the Environmental Statement it casts doubt on the adequacy of the assessment of alternatives presented in that Environmental Statement.

3.40 On its case, the Applicant did not carry out a design simulation to maximise the sum of power from DBS West and DBA until its submission at the Applicant’s Wake Loss assessment (REP8-038), at the request of the ExA (Response to Issue Specific Hearing 3 (ISH3) Action Points). This could have assisted in mitigated impacts ‘by design’ from the beginning, but Appendix A demonstrates that this was not considered in the design process.

- 3.41 This does not demonstrate any attempt to mitigate impacts on DBA, DBB and DBC. At its highest, it demonstrates the consequence of other design workstreams. This does not demonstrate any engagement with the Projco IPs, reflecting the absence of such engagement at this stage.

Future Work

- 3.42 Paragraph 31 of the Applicant’s Second Consultation Response states that: “*Wake issues are closely entwined with a range of key design and procurement decisions*”. This demonstrates that wake effects can still be managed through design and procurement decisions that are to be made on the Projects.
- 3.43 Paragraph 37 of Section 4.7 the Environmental Statement Volume 7 Chapter 4 – Site Selection & Assessment of Alternative (Revision 3) (REP7-029) recognises that there will be further design work as the Projects progresses:

“It should be noted that further refinement of the Array Areas would be conducted prior to construction commencing to ensure the area of each array is within the maximum allowed by the Projects Agreement for Lease. Further refinements will be based on the minimum power density requirements and layout optioneering undertaken post DCO submission”.

- 3.44 Appendix A does not address this future design work; it stops with the application design.
- 3.45 The protective provisions that the Projco IPs have requested are included in the DCO allow for a further assessment based on the final design and layout of the Projects, to reflect the design and procurement decisions that remain to be made on the Projects and the final impacts of wake effect on DBA, DBB and DBC from those Projects.

Conclusion

- 3.46 The results identified in the new information presented in Appendix A may be consequences of the design process that the Applicant has undertaken, but it does not demonstrate that wake effect on DBA, DBB and DBC was a factor or consideration in that design process and Appendix A does not demonstrate reasonable endeavours to mitigate impacts on DBA, DBB and DBC and does not provide a legitimate basis for the Secretary of State to conclude that the Applicant has complied with Paragraph 2.8.232 and 2.8.233 of the 2025 NPS EN-3.
- 3.47 The evidence submitted to the examination and highlighted above demonstrates that wake effects on DBA, DBB and DBC have not been a factor in the design process of the Projects.

4. FINANCIAL ANALYSIS

- 4.1 The Applicant continues to make the assertion that the Projco IPs should somehow have understood the wake effects of the Projects at various points in 2020/2021 and taken this into account (see Paragraph 21 and 50i. of the Applicant’s Second Consultation Response). This is completely misguided in law and policy, and ignores the fact that the application for development consent was not submitted until 2024. Whilst the Applicant’s point has no weight, the Projco IPs have already addressed this point and the relevant timeframe in evidence to the examination: see the comments on the response to ExAQ2 IOU.2.13 at Appendix 2 to the Deadline 7 Submissions (REP7-139).
- 4.2 In stating this position, the Applicant also ignores the fact that the Projco IPs have been actively seeking to engage on wake effects throughout the development of the Projects, notwithstanding that the onus of such engagement rests with the Applicant. This is evidenced by Table 2-1 of the

statement of common ground (REP8-031) which demonstrates the repeated requests made by the Projco IPs in respect of wake effects which the Applicant did not respond to.

- 4.3 Paragraphs 32 and 33 of the Applicant's Second Consultation Response demonstrate that, until the Five Estuaries decision, the Applicant appears to have been proceeding on an assumption that there would be a requirement to address wake effects.
- 4.4 Paragraph 31 of the Applicant's Second Consultation Response demonstrates that the CfD was awarded on 14 January 2026, following a process that provided for bids after the Awel y Mor decision and the Mona Decision when the approach of the Secretary of State to wake effects would have been known to the Applicant.
- 4.5 Paragraph 31 of the Applicant's Second Consultation Response demonstrate that the financial investment decision in respect of the Projects has not yet been made.
- 4.6 To the extent that the Applicant has not factored wake effects into its financial analysis to inform both its CfD bid and its financial investment decision, notwithstanding the clear direction of policy and Secretary of State decisions and noting that the Applicant's bid for the CfD process pre-dates the Five Estuaries decision, then that is a risk that the Applicant has elected to take. It cannot be overcome by an assertion that the Projco IPs should have taken this into account without any knowledge of the Projects or their impacts some five years ago.

5. MITIGATION

- 5.1 The Applicant has not presented new or further evidence on mitigation through future design in Appendix A and has not addressed the previous comments that the Projco IPs have made in respect of its approach to future mitigation. The Projco IPs' position remains that there is no evidence to demonstrate that reasonable endeavours have been made to mitigate the effects of the Projects on DBA, DBB and DBC, or to demonstrate that there would be no prospect of such mitigation in the future. Appendix A does not change this.
- 5.2 The Projco IPs have consistently made the point that the mitigation hierarchy should apply, and this is consistent with the Secretary of State's conclusion at Section 4.83 of the Outer Dowsing Decision Letter. The Secretary of State has recognised the requirement to "*avoid, reduce, mitigate or compensate for wake effects as set out in the 2024 NPS (paragraphs 2.8.213 to 2.8.217) or 2025 (paragraphs 2.8.186 to 2.8.190) NPSs*" at Section 4.88 of the Outer Dowsing Decision Letter. This is a clear conclusion that the mitigation hierarchy applies in its entirety for wake effects as a matter secured under the NPSs.
- 5.3 The Applicant has not consulted on or engaged with the Projco IPs on the mitigation measures that it identified in the Applicant's Wake Loss assessment (REP8-038).
- 5.4 Appendix A does not consider further any mitigation measures or address the Projco IPs' criticism of the measures considered in the Applicant's Wake Loss assessment (REP8-038). One measure which is referred to but which is not considered in detail and for which there is no project specific assessment is induction control; this is very briefly mentioned by the Applicant at Paragraph 90. In respect of active induction control (AIC), the Projco IPs' position is that:
 - 5.4.1 AIC has been retrofitted and tested on onshore and offshore wind farms:
 - (a) AIC on onshore wind farm in Italy, part of the European research project CL-Windcon (see reference Bossanyi & Ruisi, 2021);
 - (b) AIC on onshore wind farm in England (see reference van der Hoek et al., 2019); and

- (c) AIC on Lillgrund offshore wind farm (DK) and offshore wind farms (see references Bossanyi et al., 2022 and 2023), also part of the current DNV’s Joint Industry Project on the Bankability of Wind Farm Control.
- 5.4.2 in simulations, AIC has also been linked to the reduction of wind farm blockage effects (Bossanyi & Bleeg, 2024); and
- 5.4.3 AIC does have the potential to lead to a reduction on the impacts on DBA, DBB and DBC.
- 5.5 This is one example of the Applicant’s Wake Loss assessment (REP8-038) being far too high level on potential mitigation measures, not setting out a project specific assessment in respect of such measures, not consulting or engaging with the Projco IPs on such measures and reaching conclusions in relation to the potential reduction in impacts which are not justified.

6. ISSUE 3: COMPENSATION AND VIABILITY

Compensation

- 6.1 The Applicant’s submission in respect of compensation in the Application’s Second Consultation Response primarily deals with the 2025 NPS and the Projco IPs have no further submissions in that respect given the Projco IPs’ position that the Applicant has not complied with the 2024 NPS or the 2025 NPS.
- 6.2 It is important to note that the Secretary of State has recognised the requirement to “*avoid, reduce, mitigate or compensate for wake effects as set out in the 2024 NPS (paragraphs 2.8.213 to 2.8.217) or 2025 (paragraphs 2.8.186 to 2.8.190) NPSs*” at Section 4.88 of the Outer Dowsing Decision Letter. This is a clear conclusion that compensation for wake effects is a matter addressed under the NPSs and in accordance with the mitigation hierarchy should be secured in the decision. The Applicant has consistently sought to argue that the mitigation hierarchy does not apply and that the NPS does not require compensation, and it is clear from the Outer Dowsing Decision Letter that the Secretary of State has rejected that approach and accepted that there is a requirement to compensate for wake effects under the 2024 NPS framework in the 2024 NPS.
- 6.3 The Secretary of State’s position in the Outer Dowsing Decision Letter is consistent with that set out by the Projco IPs throughout the examination; see Section 4 and Section 10 of the Projco IPs’ Closing Statement.
- 6.4 Notwithstanding this, it is important to ensure that the Secretary of State reaches the correct decision in terms of law and policy, applying the principles of consistency to the treatment of the Outer Dowsing Decision Letter.
- 6.5 The wake loss effects on DBA, DBB and DBC are not purely private interests which lie outside of the planning system (in the way that a private view may have been in *Wood-Robinson v Secretary of State for the Environment [1998] JPL 976*). The 2024 NPS and 2025 NPS make this clear by making policy provisions for effects on other offshore installations. The reference to this case law is an attempt at the re-framing of the Applicant’s argument that wake effects are not a relevant consideration for this examination when they plainly are and have been accepted as such both in policy and decisions. As the Supreme Court has recently made clear in *Fearn and others v Board of Trustees of the Tate Gallery [2024] AC 1 [2023] UKSC 4* at Para 109: “*The objectives which a planning authority may take into account in formulating policy and in deciding whether to grant permission for building on land or for a material change of use are open-ended and include a broad range of environmental, social and economic considerations*”. Here, the environmental and economic impacts on an offshore wind farm are matter of policy which must

be taken into account pursuant to the 2024 NPS and the 2025 NPS and the reference to the Planning Practice Guidance on material considerations to support its contention rather than addressing the directly applicable provisions of the 2024 NPS which do apply demonstrate the failings in the Applicant's case.

- 6.6 Beyond this, the Applicant has not identified any reason in law or policy why a protective provision cannot include compensation. This is, of course, consistent with the Planning Act 2008 which makes express provision for compensation from a legal perspective and the policy (as properly recognised by the Secretary of State) which makes it clear that compensation extends to wake effects.
- 6.7 What the Applicant's argument boils down to is a disagreement on the extent of the impact; this is addressed in Sections 9 and 10 below.

Viability

- 6.8 The Applicant continues to misinterpret the policy, which requires demonstration of a likely affect on future viability, rather than demonstrating that a project is unviable now through a detailed viability assessment. This is not a new point and has been addressed by the Projco IPs through submissions to the examination which the Projco IPs do not repeat in this response.
- 6.9 What the Secretary of State needs to be satisfied of in prescribing the weight directed by Policy 2.8.347 of the 2024 NPS is that there is a likelihood that unmitigated wake effects on DBA, DBB and DBC will lead to an effect on the future viability of DBA, DBB and DBC. The Projco IPs have presented evidence to demonstrate this.
- 6.10 In the Applicant's Second Consultation Response, the Applicant does characterise the impact that the Secretary of State is looking for in respect of a project which is post-FID (which DBA, DBB and DBC are) as meaning something which "*would cause the project to be terminated early (because its continuing returns, or losses, were unacceptable)*". Whilst the word "*would*" is misapplied here (the correct wording in Policy 2.8.347 is "*likely to affect*"), the general principles identified by the Applicant are correct and the Projco IPs' position in the examination was that the unmitigated wake effects on DBA, DBB and DBC are likely to affect the future viability of DBA, DBB and DBC which could materialise through earlier decommissioning of DBA, DBB and DBC.
- 6.11 The Applicant then mischaracterises the policy again through its assertion that there are a "*multitude of such factors (including allowing, for example, for unplanned major maintenance and equipment replacements), which will be analysed at each stage of project operation and in relation to key project decisions*". Economic impacts as a result of wake effects do not need to be the sole factor in affecting viability under the wording of the policy, but in any event the impact of the wake effects on DBA, DBB and DBC are such that the Projco IPs' position supported by the evidence in this examination is that they will have a likely affect on future viability.
- 6.12 The cherry picking of two quotes from a case (*Hunter v Secretary of State for Levelling Up Housing and Communities and another [2023] EWHC 1068 (Admin)* (the **Hunter case**) which deals with a local development planning policy for rural workers dwellings where that policy requires something specific and materially different in terms of viability evidence¹ and where the relevant conclusion by the Judge is that: "*the test of financial viability **as described in the policy***

¹ The relevant policy required that: "*The future economic viability of the enterprise to which the proposed dwelling relates can be demonstrated by a sound business plan. This should demonstrate that the proposed enterprise has been planned on a sound financial basis with a reasonable prospect of delivering a sustainable profit before or by the expiry of the temporary period that the proposal seeks to secure*".

must be an objective one” does not assist this examination. “Viability” in wider planning policy contexts has been held to include not just a binary question of whether a project can proceed profitably, but whether the developer will be incentivised to proceed as planned (see e.g. *Minerva (Wandsworth) Ltd v Greenland Ram (London) Limited* [2017] EWHC 1457 (Ch) per Rose J at [15]).

- 6.13 To address the substantive point which the Applicant appears to make by reference to the Hunter case, the evidence that the Projco IPs have provided to this examination is objective and is based on a realistic worst case; it is based on known CfD strike prices and electricity prices, and is based on the lower of two potential financial impacts (as explained in Section 5 of the Projco IPs’ Closing Statement) to provide a conservative assessment. This addresses the points the Applicant identifies at Paragraph 50iii. On a without prejudice basis and to further objectively demonstrate the level of financial impact, the Projco IPs have also demonstrated that even on the basis of the Applicant’s wake loss assessment there will be a likely affect on the future viability of DBA, DBB and DBC which necessitates the application of substantial weight (Deadline 6 (REP6-081). This can in no way be described as a distorted analysis of a test of future viability. In contrast, the Applicant’s financial analysis is undertaken solely on the basis of its assessment (without a range of scenarios), and without any engagement with the Projco IPs or understanding of the underlying finances behind DBA, DBB and DBC. As per the Projco IPs’ submissions at Section 5.12 of its Closing Statement, the Applicant has adopted an artificial exercise in an apparent attempt to downplay such financial impacts. It is the Applicant who has employed the kind of distorted analysis that the Judge in the Hunter case sought to avoid.
- 6.14 The Applicant’s final position on viability is that: *“The evidence shows that wake effects may marginally reduce Projcos’ returns”*. The Projco IPs’ position is that this is not a credible conclusion based on its evidence and the scenarios that it has presented. As with EIA significance, this is simply an understatement of the effects by the Applicant. No weight should be afforded to the Applicant’s analysis as it has not engaged with the Projco IP’s in an attempt to seek to understand the financial impact of the Projects on DBA, DBB or DBC.
- 6.15 The Projco IPs have also drawn attention to the risk in respect of operational costs, including as a result of the structure of contracts. DBA, DBB and DBC are being delivered and operated as three phases operating together, so one terminating early would have material, adverse commercial effects on the other phases. That is why the Projco IP’s are treating them together as a whole for assessment. It is too simplistic to simply analyse DBA, DBB and DBC separately, and if the Applicant had engaged with the Projco IPs to understand the structure of the projects and the underlying contracts (including operation and maintenance contracts) this would be understood.
- 6.16 In any event and as explained by the Projco IPs during examination, Policy 2.8.347 of the 2024 NPS EN-3 is a directional policy as to weight. The Projco IPs’ position, as set out in its submissions to the examination, is that Policy 2.8.347 is engaged. Even if the Secretary of State were to conclude that there was no likely effect on future viability such that Policy 2.8.347 is not engaged, the Projco IPs’ position is that the weight to be afforded to the impacts should attract substantial or significant weight as set out in Projco IPs’ Closing Statement. This is based on the conclusions on EIA significance addressed below.
- 6.17 The Turney Opinion conclusion does not state what the Applicant sets out at Paragraph 51. It highlights that, once the Secretary of State reaches the conclusion that the Projco IPs say it must on weight and the need for mitigation, the Secretary of State must address this matter pursuant to

the DCO. This need is only heightened by the fact that the Applicant, as identified in its submission, is not engaging with the Projco IPs.

7. ENGAGEMENT

7.1 The Secretary of State has concluded the following on the Outer Dowsing Project in the Outer Dowsing Decision Letter:

“The Secretary of State agrees with the ExA's conclusions as to the Applicant's failure to meaningfully adhere to such policy and considers that the Applicant acted poorly by not engaging on this matter until Deadline 4 of the Examination, and only when requested to do so by the ExA and relevant IPs”

7.2 The Applicant has acted in precisely the same manner in this examination as the Applicant in the Outer Dowsing project, and in spite of repeated requests for engagement on this issue prior to and during the examination the Applicant did not adhere to the relevant policy or engage on wake effect matters until Deadline 4 of this examination. Therefore, the Secretary of State must reach the same conclusion in terms of policy compliance and engagement.

7.3 This is particularly the case in this examination, where the Projco IPs had been requesting information in respect of wake effects prior to the submission of the Application for the Projects as part of the Projco IPs' engagement on consultation.

7.4 The lack of engagement is reflected by the Applicants, who state at Paragraph 27 of the Applicant's Second Consultation Response that they *“have sought to engage with the Projcos and Ørsted in relation to wake matters, during the latter part of the Examination and subsequently”*. As is clear from the Outer Dowsing Decision Letter, that is too late, and as is clear from the evidence there has not been substantive engagement.

7.5 Appendix A does not demonstrate any meaningful attempts by the Applicant at engagement with the Projco IPs in respect of wake effects. Given that this is the document that purports to demonstrate compliance with the 2025 NPS, which the Guidance requires includes a good neighbour approach, this is a fatal flaw to any argument regarding reasonable endeavours to mitigate effects.

7.6 This is consistent with the Applicant's approach to mitigation measures set out in the Applicant's wake loss assessment, which were not subject to any engagement with the Projco IPs and which were simply presented in an examination document at Deadline 4 and late in the Projects development process.

7.7 There has not been any substantive engagement between the Applicant and the Projco IPs following the close of the examination.

7.8 Following receipt of the Second Consultation Letter and the Third Consultation Letter, the Projco IPs have sought to engage further with the Applicants. However, the Projco IPs understand that the Applicant's position is that there is no prospect of the issues relating to wake loss being agreed.

7.9 This is reflected by Paragraph 28 of the Applicant's Second Consultation Response which states that: *“The Applicants' view is that there is no realistic prospect of making progress towards agreement on any substantial topic pursuant to this engagement”*. The Projco IPs' disagree, and the protective provisions set the framework for such engagement.

7.10 Given the nature of the questions raised by the Secretary of State in the Second Consultation Letter, it is clear that engagement is an important and relevant consideration for the Secretary of State.

- 7.11 Throughout the examination, the Projco IPs have engaged on requests (including on a without prejudice basis, such as on the drafting of a requirement) and, when requested, have presented information on a without prejudice information (including the Projco IPs' position on both the wake effects and financial impacts as a consequence of those wake effects). By contrast, the Applicant has not engaged in the same manner.
- 7.12 In considering Paragraph 2.8.316 of the 2024 NPS, the Secretary of State cannot conclude that the Applicant has made: "*reasonable efforts to work collaboratively with those who may potentially be impacted to mitigate impact*".

Engagement on Protective Provisions

- 7.13 In respect of engagement, it is important to note that the ExA did ask the Applicant (at question IOU.2.22 of PD-022) to "*submit a copy of draft protective provisions for consideration regarding the matter of wake loss on a without prejudice basis*". The Applicant did not do so.
- 7.14 The criticism aimed at the Projco IPs at Paragraph 37 of the Applicant's Second Consultation Response is clearly not "misguided" as alleged. The Applicant was asked by the ExA to provide a document (on a without prejudice basis) and it elected not to do so. The Projco IPs have commented on the form of requirement on a without prejudice basis, notwithstanding that it is not the Projco IPs' advocated approach to addressing this issue.
- 7.15 The Applicant's position is that there is no justification for a requirement or protective provisions, yet when asked by the Secretary of State to comment on a requirement it did so on a without prejudice basis. The Applicant's lack of engagement on protective provisions is not justified in terms of engagement when it has been asked to provide drafting on a without prejudice basis and has refused to do so. This is a further example of a lack of engagement.
- 7.16 Finally, the continued failure to engage on the protective provisions or a resolution to this matter is a consequence of the Applicant's misguided and entrenched view that compensation is not appropriate (see for example Paragraph 27 viii of the Applicant's Second Consultation Response where the Applicant states: "*there is an inherent limit to what such engagement can achieve if one side (the Projcos and Ørsted) only really wish to discuss something (i.e. financial compensation) for which there is no precedent within the planning system and which (under what is now EN-3 2025) is expressly ruled out by policy (see further below)*"). The lack of precedent is clearly no excuse not to engage when the Projects give rise to significantly greater impacts than previous projects and when there are other protective provisions which address substantially similar matters, and the Applicant has ignored the 2024 NPS which apply and which the Secretary of State recognise in the Outer Dowsing Decision Letter require consideration of mitigation or compensation in respect of wake effects.

8. PROTECTIVE PROVISIONS

- 8.1 At Section 4.2 of the Applicant's Second Consultation Response, the Applicant responds to the Projco IPs explanation in the Projco IPs' First Consultation Response as to why protective provisions are to be preferred. Taking each in turn:
- 8.1.1 the point made at section 35i has no force, because the point is made on the basis of the Applicant's position that limited negative weight is ascribed in the planning balance to the effect on DBA and very little negative weight is ascribed to DBB and DBC. This is not a credible position given precedent and the scale of impacts on DBA, DBB and DBC versus those impacts in prior offshore wind decisions;

- 8.1.2 all of the points made at 35 ii of the Applicant's Second Consultation Response go, in effect, to the nature of the determining authority under the protective provisions. Whilst the criticisms are not accepted, they would all be overcome by either a Planning Inspector or the Secretary of State being the determining authority under the protective provisions as opposed to an independent expert. However, it is important to note that the Projco IPs' position is consistent with other protective provisions for the protection of offshore assets which require any disputed quantum to be settled by a third party such as those protective provisions included in respect of the Morecambe project and discussed below;
- 8.1.3 the point made at section 35iii, the Applicant does not address the challenge in respect of monitoring and how any ineffective mitigation would be addressed through monitoring, but instead conflates this issue with the point on compensation (which the Projco IPs have demonstrated throughout the examination and in this response is incorrect); and
- 8.1.4 the points made by the Applicant at section 35 iv, the Applicant at:
- (a) point a) refers to an Advice Note prepared by PINs which does not have the force of law, and which is qualified in its language in any respect; and
 - (b) point b) simply makes a statement regarding compensation, ignoring again the fact that the legal framework for a DCO allows for compensation and that its own DCO includes drafting for the payment of compensation in respect of the loss of revenue in the form of a protective provision. Of course, this challenge is overcome through the use of a protective provision (or an article) rather than a requirement and to the extent that this is a legitimate concern in respect of the legality of a requirement by the Applicant is supported by the use of the protective provision provided for by the Projco IPs.
- 8.2 Protective provisions are particularly important where there would otherwise be an impact on an affected party which cannot be addressed by other terms of the DCO, and where there is doubt as to the adequacy of the statutory compensation code (incorporated in the DCO) to address the matter adequately. The Applicant rightly notes that protective provisions originate in Victorian railway legislation, and their function remains essentially the same. They are regularly secured for the protection of statutory undertakers and there is no reason why they should not be secured for the benefit of the Projco IPs who are also statutory undertakers.
- 8.3 The Secretary of State recognises in the Outer Dowsing Decision Letter the need for wake effects to be addressed under the mitigation hierarchy. The Applicant contends that requirements cannot secure the payment of compensation and (at least implicitly) that neither could the Projco IPs be compensated under the compensation code. Whilst the Projco IPs would take issue with that analysis, the Applicant's position strengthens the case for using protective provisions to address this matter. Although no such provisions were imposed in the Outer Dowsing DCO, the extent of the impact here is far greater and proposed protective provisions have been advanced. The Secretary of State's confirmation that wake losses are effects which should be compensated for where residual effects exist after mitigation points strongly towards the imposition of a protective provision. The only compensation available for wake loss effects is monetary compensation.
- 8.4 The Projco IPs' position that protective provisions are an appropriate means of addressing wake effects is further supported by Parts 3 and 4 of Schedule 3 to The Morecambe Offshore Windfarm Generation Assets Order (the **Morecambe DCO**). These schedules provide protective provisions

which provide protection, including financial protection through unlimited recovery of financial losses, for the operators of existing oil and gas infrastructure and so the protective provisions address a substantially similar situation pursuant to the same policy framework and provide:

- 8.4.1 for the payment of additional costs incurred by the affected party, with “additional costs” meaning “*any additional costs reasonably and properly incurred and evidenced by the licensee in carrying out the licensee’s operations (which for the avoidance of doubt includes decommissioning operations) caused by the construction, operation or decommissioning of the authorised development (and includes all reasonable costs incurred by the licensee in engaging and retaining such experts, consultants and contractors as may be reasonably necessary to allow the licensee to carry out its operations under the licence) but excluding any costs prior to 1 June 2029 and consequential loss*” and
- 8.4.2 that any dispute in relation to such costs referable to arbitration for determination.
- 8.5 Therefore, the Secretary of State has: 1) reached a conclusion that financial compensation should be payable; and 2) included protective provisions in an offshore wind DCO in respect of financial compensation for a similar matter pursuant to the 2024 NPS policy framework in a case where the Secretary of State found compliance with the 2024 NPS.
- 8.6 The likely level of financial harm identified by the affected third parties in the Morecambe DCO was significantly less than the level of financial harm identified by the Projco IPs. In that case, the highest financial harm identified by the affected third party (Spirit Energy) was in the range of £10million to £40million. In this case, the harm identified by the Projco IPs is significantly greater than that level of financial impact and on its case, as previously presented in the Projco IPs’ Closing Statement, the harm is in the range of £499 million to £669 million (please see Paragraph 5.7 of the Projco IPs’ Closing Statement). The impact in the Morecambe DCO was also in respect of oil and gas and in respect of schemes which were expected to be decommissioned in a relatively short timeframe.
- 8.7 It would be irrational to provide such financial protection for the oil and gas industry in respect of an asset which is expected to be decommissioned where the Secretary of State found policy compliance and not to provide equivalent protection for three renewable energy projects which are in the commissioning phase and where the Secretary of State cannot find policy compliance.
- 8.8 The point that the Applicant makes regarding the precedent (where it states that the Secretary of State has a “*consistent and now established practice of imposing requirements, rather than protective provisions*”) is not a good point. There has only been one case in front of the Secretary of State where the Secretary of State has had to choose between imposing a requirement or protective provisions (the Outer Dowsing project) and, for the reasons the Projco IPs have set out in the examination and this consultation response, the impacts on DBA, DBB and DBC are much more significant than those to the affected parties on the Outer Dowsing project. This is particularly weak in the context of the precedent in the Morecambe DCO.
- 8.9 The Projco IPs’ note the protective provisions included in the Outer Dowsing DCO impose an obligation on the waked parties to provide information (see Requirement 34 (3)(b) of Part 3 of Schedule 1). The Projco IPs’ position is also that a protective provision is the appropriate mechanism by which to impose an obligation on a third party undertaker affected by a project.
- 8.10 The Applicant has not provided any reason as a matter of law or policy as to why protective provisions in the form drafted by the Projco IPs could not be included in the DCO. The

Applicant's position boils down to a matter of justification, which the Projco IPs address in section 6 and the following sections.

9. EIA SIGNIFICANCE

- 9.1 In respect of the Projects and the impact of wake effects on DBA, DBB and DBC, the Projco IPs have demonstrated throughout the examination of the Projects (by applying the Applicant's EIA methodology) that the impacts on DBA, DBB and DBC are significant. This analysis is set out at Paragraphs 27 to 34 of the Projco IP's Deadline 4 Submission (REP4-117) and summarised in section 9 of the Projco IP's closing statement at Deadline 8 (REP8-059). In this context, the appropriate receptor is the collective group of wind farms being DBA, DBB and DBC.
- 9.2 The Projco IPs' position on EIA and EIA significance should be preferred. The Projco IPs have:
- 9.2.1 been consistent on the correct approach to EIA throughout;
 - 9.2.2 properly applied the methodology that the Applicant has set out in its Chapter 6 of the Environmental Statement (APP-076); and
 - 9.2.3 presented evidence to allow the Secretary of State to reach a reasoned conclusion on DBA, DBB and DBC whereas the Applicant has only provided evidence to allow the Secretary of State to reach a conclusion on DBA.
- 9.3 The Applicant's position on EIA, summarised at Paragraph 23 and 24 of its Closing Statement, is that: 1) there is no recognised basis to determine significance; and 2) questions of sensitivity are open to interpretation. The Applicant's position remains routed in its position which it restates in its Closing Statement that the effect is "*outside of the framework of the EIA Regulations*". The Secretary of State has clearly considered on other projects that a wake effect is an environmental effect and that the mitigation hierarchy applies and so wake effect is within the framework of the EIA Regulations.
- 9.4 The Projco IPs' case should be preferred from an EIA perspective, applying both the methodology in the Chapter 6 of the Environmental Statement (APP-076) and the precautionary principle.
- 9.5 Appendix A further supports the Projco IPs' position in respect of EIA significance. The Applicant, in presenting its three criteria for mitigation (which are not agreed as appropriate criteria by the Projco IPs for the reason set out in the Projco IPs' submissions but which represent the Applicant's position) identifies Criterion 1 as "the Meaningful Impact" criteria. This is set out in Appendix A at Table 5-1. In this respect:
- 9.5.1 at Section 7.5 of the Applicant's Wake Loss assessment (REP8-038), the Applicant identifies that a reduction from a 2% impact to a 1.3% impact (e.g. 0.7% less) would "*significantly reduce the wake impact at DBA*";
 - 9.5.2 Section 7.5 of the Applicant's Wake Loss assessment (REP8-038) identifies that such a reduction meets Criterion 1, and so on the Applicant's evidence a 0.7% impact in respect of DBA is significant and constitutes a meaningful impact;
 - 9.5.3 applying this to the Projco IPs' position, the impacts identified by the Projco IPs' Wake Loss Assessment (REP7-140) (being an average of between 1.7% or 1.8% across DBA, DBB and DBC would be significant, as would the individual impacts of between: 3.3% and 3.5% on DBA; 1.2% and 1.4% on DBB; and 0.4% and 0.5% on DBC) must be significant;

- 9.5.4 applying this to the Applicant's position, a 2% total wake loss effect on DBA (which on the Applicant's case is the impact on DBA) must also be significant; and
- 9.5.5 the precautionary worst case impact, which is the total wake loss effect on the Projco IPs' case, must also be significant.
- 9.6 To the extent that the Applicant sought to argue that some other methodology should apply to the consideration of wake effects, it should have consulted on that methodology with the Projco IPs at the pre-application stage and applied that methodology through its EIA. It did not.
- 9.7 In respect of Outer Dowsing, the Secretary of State's conclusion is based on an assessment of a circa 1% impact on affected wind farms. By contrast, on the:
- 9.7.1 Projco IPs' case, the impact is collectively an average of between 1.7% or 1.8% across DBA, DBB and DBC would be significant, as would the individual impacts of between: 3.3% and 3.5% on DBA; 1.2% and 1.4% on DBB; and 0.4% and 0.5% on DBC for DBA; and
- 9.7.2 Applicant's case, the impact is circa 2% for DBA and not presented for DBB or DBC.
- 9.8 Therefore, the position in respect of EIA significance is materially different and materially greater in respect of DBA, DBB and DBC.

10. PRECEDENT AND CONSISTENCY OF DECISION MAKING

- 10.1 As noted above, the Projco IPs have presented the Secretary of State with an assessment which allows it to reach a reasoned conclusion on each of DBA, DBB and DBC. The Applicant has not done so.
- 10.2 The Projco IPs consistent position in respect of the consistency of decision making, which is referred to in Paragraph 3.1 of the Projco IPs' First Consultation Response, goes to the weight to be afforded to wake effects given precedent. The substance of this point is set out concisely in section 12 of the Projco IPs' Closing Statement and Section 12 of the Projco IPs' Deadline 9 Response (REP9-033), but is updated below to address the comments made by the Applicant and the recent decisions.
- 10.3 In the Projco IPs' First Consultation Response, the point raised regarding consistency and the protective provisions was a narrow point made at Paragraphs 3.2 to 3.4. The simple point made in the Projco IPs' First Consultation Response was that if there are submitted protective provisions in two separate DCO applications, and the Secretary of State requests an update on engagement in respect of the protective provisions for one application, then the Secretary of State should also proceed to request an update on engagement in respect of the other. This point is largely superseded by the Secretary of State's Second Consultation Letter and the request for update on engagement, albeit this did not expressly address the protective provisions.
- 10.4 Rather than engaging with the point regarding weight or the narrow point above, the Applicant's analysis at Paragraphs 10 to 19 of the Applicant's Second Consultation Response jumps straight to the manner in which the wake effects are addressed. This is a secondary point.
- 10.5 The primary point regarding consistency of decision making and weight is that it would be irrational for the Secretary of State to apply less weight to the impacts in this case when they are clearly more significant impacts than those which have been considered in previous decisions.
- 10.6 The secondary point, and the one which the Applicant engages with in the Applicant's Second Consultation Response, is the consequence of addressing wake effect having reached a conclusion

on weight. On that, and given the Projco IPs' position on EIA significance, the Projco IPs' position is that this is a situation which does warrant the imposition of protective provisions.

10.7 Therefore, Table 4-1 of the Applicant's Second Consultation Response requires a response and clarification so that the outcome is seen in its context. This is provided in Table 1 below.

Table 1: Comparison of Wake Effects and the Weight Afforded to Impacts

Project	Wake Effect (GWh)	Wake Effect (AEP %)	Weight	Resolution	EIA Significance	Agreement
Awel y Mor	26GWh on a lifetime basis	Circa 2%	Moderate negative	Requirement	Not Significant	Unknown
Mona	833GWh on a lifetime basis	1.38%	Moderate negative	Requirement	Not Significant	Yes
Morgan	1,394GWh on a lifetime basis	Circa 1.64%	Moderate negative	No Requirement (because agreement reached) and objection withdrawn	Not Significant	Yes
Morecambe ²	845GWh on a lifetime basis	0.68%	Moderate negative	Requirement	Not Significant	Unknown
Five Estuaries	Not presented in GHG assessment so unknown	Circa 1%	Very little negative weight	No Requirement	Not Significant	Unknown
Outer Dowsing	Not presented in GHG assessment so unknown	Circa 1%	Moderate negative	Requirement	Not Significant	Unknown

10.8 The Wake Loss Assessment Report submitted by the Projco IPs (REP7-140) identifies the reduction in expected energy production across DBA, DBB and DBC to be approximately:

10.8.1 312 GWh on an annual basis; and

10.8.2 9,170 GWh on a lifetime basis.

² Please note that the GWh value has been recalculated here due to incorrect value submitted in REP5-018 of the relevant examination.

- 10.9 The Projco IPs have presented a without prejudice case, based on the Applicant's wake loss assessment, which demonstrates that the loss of annual energy production to DBA, DBB and DBC even on the Applicant's case would be:
- 10.9.1 148 GWh on an annual basis; and
 - 10.9.2 4,310 GWh on a lifetime basis.
- 10.10 In respect of the primary point, this very clearly demonstrates the wake effect impacts and why, given the much greater and significant impacts on DBA, DBB and DBC than those impacts in prior decisions, it would be irrational for less weight to be afforded to the impact on DBA, DBB and DBC than has been afforded to significantly lesser impacts historically. The Projco IPs' position is that greater weight should be afforded to the impacts on DBA, DBB and DBC. Sections 10.8 and 10.9 and Table 1 demonstrates that on a lifetime basis the wake effect in lost GWh is to a scale more significant, and in relation to:
- 10.10.1 Mona and Awel y Mor, the Projco IPs identified the greater scale of impact in those cases during the examination (see Section 2.5 of the Projco IPs' Closing Statement (REP8-059) in respect of Awel y Mor and Section 12.2 of the Projco IPs' Deadline 9 Response (REP9-033) in respect of Mona);
 - 10.10.2 Morgan, on the Projco IPs' case the wake effect in terms of lost GWh to DBA, DBB and DBC is 6.6 times greater than the relevant impact in that case (and on the Applicant's case the impact is 3 times greater); and
 - 10.10.3 Morecambe, on the Projco IPs' case the wake effect in terms of lost GWh to DBA, DBB and DBC is 10.9 times greater than the relevant impact in that case (and on the Applicant's case the impact is 5.2 times greater).
- 10.11 In respect of the secondary point, the Projco IPs' position is that not only is the scale of the impact that much more significant on DBA, DBB and DBC but that there is a likely affect on future viability which necessitates that substantial weight is afforded in the planning balance.
- 10.12 Whilst the Applicant refers to Five Estuaries in the Applicant's Second Consultation Response, it does not identify any reason why the Five Estuaries decision, as the outlier, supports its position.

11. NEXT STEPS

- 11.1 The Projco IPs remain open to engagement, and would welcome engagement from the Applicant.
- 11.2 The Projco IPs' position is that the Secretary of State cannot lawfully proceed to make the DCO without the inclusion of the protective provisions given the policy framework, lack of compliance with that policy framework by the Applicant, the extent of precedent for wake loss mitigation being addressed through the 2024 NPS and the significance of the impacts of the Projects on DBA, DBB and DBC.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

6 MARCH 2026

APPENDIX 1

Leasing Round 4

Seabed Bidding Areas

We have undertaken extensive analysis of the technical resource and constraints on the seabed around England, Wales and Northern Ireland.

Working in collaboration with statutory stakeholders, we have identified four areas that offer the strongest opportunities for new offshore wind leasing development at the current time.

This will help to balance a range of needs on the seabed, reduce consenting risk, and ensure developers are well placed to bring the strongest possible projects forward.

The four Seabed Bidding Areas are:

Bidding Area 1

Dogger Bank

Comprising the Dogger Bank region

Bidding Area 2

Eastern Regions

Comprising the Southern North Sea region, the eastern part of The Wash region, and the East Anglia region

Bidding Area 3

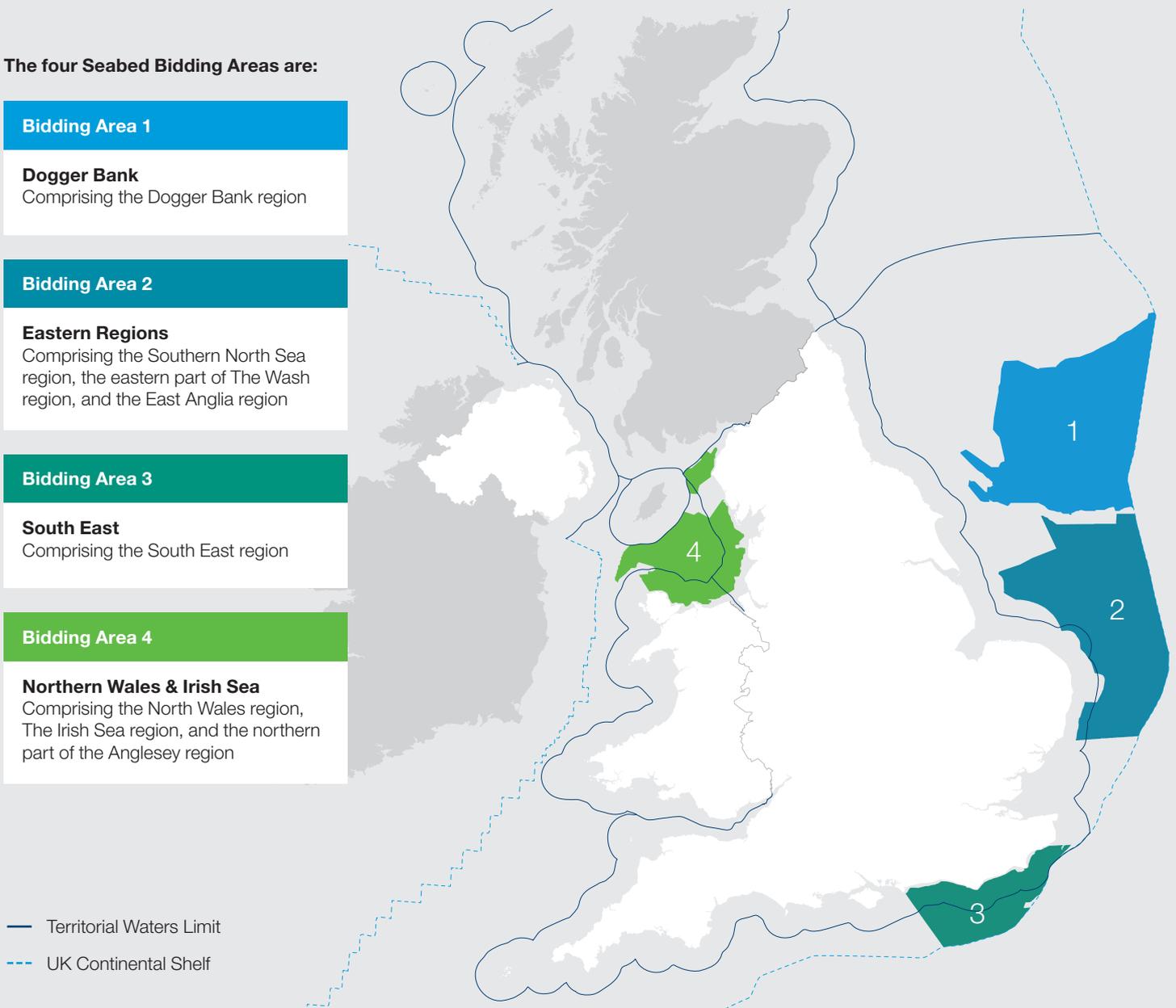
South East

Comprising the South East region

Bidding Area 4

Northern Wales & Irish Sea

Comprising the North Wales region, The Irish Sea region, and the northern part of the Anglesey region



Find out more

Learn more about Offshore Wind Leasing Round 4, including our technical work and engagement activity, on our website www.thecrownestate.co.uk/round4

Alternatively, please email us at round4@thecrownestate.co.uk