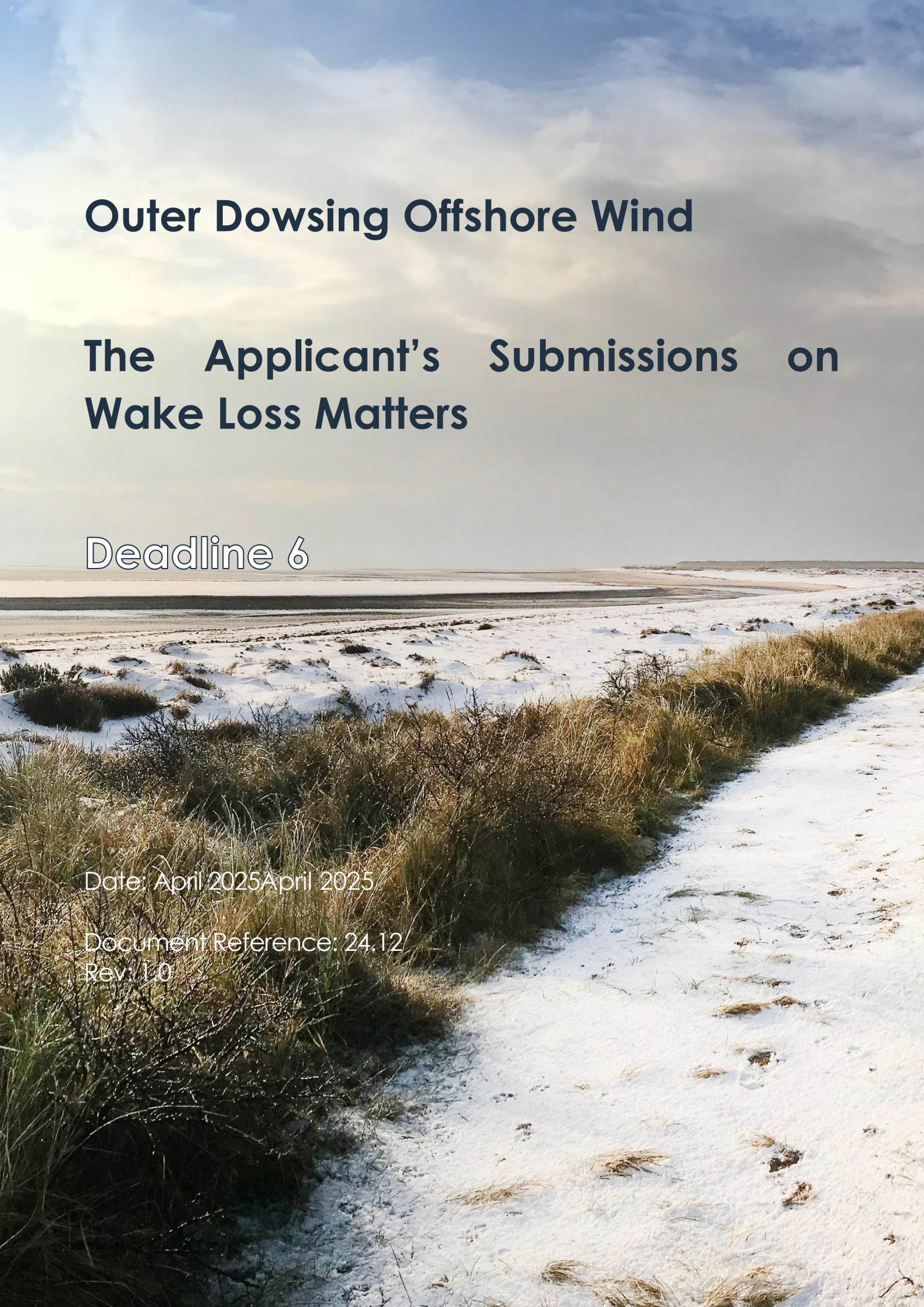

Outer Dowsing Offshore Wind

The Applicant's Submissions on Wake Loss Matters

Deadline 6

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Acronyms & Definitions

Abbreviations / Acronyms

Abbreviation / Acronym	Description
DCO	Development Consent Order
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	Examining Authority
GW	Gigawatt
ISH	Issue Specific Hearing
IP	Interested Party
NPS	National Policy Statement
ODOW	Outer Dowsing Offshore Wind (The Project)
OWF	Offshore Wind Farm
SoS	Secretary of State
TCE	The Crown Estate

Terminology

Term	Definition
The Applicant	GT R4 Ltd. The Applicant making the application for a DCO. The Applicant is GT R4 Limited (a joint venture between Corio Generation (and its affiliates), Total Energies and Gulf Energy Development (GULF)), trading as Outer Dowsing Offshore Wind. The Project is being developed by Corio Generation, TotalEnergies and GULF.
Array area	The area offshore within which the generating station (including wind turbine generators (WTG) and inter array cables), offshore accommodation platforms, offshore transformer substations and associated cabling will be positioned.
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for a Nationally Significant Infrastructure Project (NSIP).
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
Environmental Impact Assessment (EIA)	A statutory process by which certain planned projects must be assessed before a formal decision to proceed can be made. It involves the collection and consideration of environmental information, which fulfils the assessment requirements of the EIA Regulations, including the publication of an Environmental Statement (ES).
Environmental Statement (ES)	The suite of documents that detail the processes and results of the EIA.
National Policy Statement (NPS)	A document setting out national policy against which proposals for Nationally Significant Infrastructure Projects (NSIPs) will be assessed and decided upon
Outer Dowsing Offshore Wind (ODOW)	The Project.

Pre-construction and post-construction	The phases of the Project before and after construction takes place.
The Project	Outer Dowsing Offshore Wind, an offshore wind generating station together with associated onshore and offshore infrastructure.

Executive summary

1. This document provides the Applicant's Deadline 6 Submissions on Wake Loss Matters. In particular, this Submission responds to the Action Points arising from Issue Specific Hearing (ISH) 8 held on Wednesday 19 March 2025 and to the submissions made by Interested Parties (IPs) at Deadline 5 and on 28 March 2025 (AS-036 and AS-037).
2. The Applicant has previously highlighted that the question of the applicability of the policies relating to "Other offshore infrastructure and activities" to wake effects experienced by other offshore wind farms is the subject of a debate in the context of the Mona Offshore Wind Farm and the Morgan Offshore Wind Farm DCOs, which will fall to be determined by the Secretary of State (SoS) prior to determination of the application for development consent for the Project.
3. As a matter of principle, the extent of and effects arising from any wake effects only becomes a relevant consideration for the ExA and the SoS in the event that the SoS decides against the applicants in relation to those two applications.
4. If that happens, then in light of the evidence before this Examination there is no significant issue on the facts of this case and no justification for any additional provisions in the DCO .
5. The Applicant has demonstrated throughout the Examination that wake effects arising from the Project are very small and cannot be said to be significant in EIA terms or material in policy terms. That position is supported by both general and site-specific analysis.
6. The IPs maintaining representations in this Examination on the grounds of wake effects (the Orsted IPs and the Equinor IPs) agree with the methodology used by the Applicant's independent expert consultants to carry out that assessment and the conclusions reached in relation to the quantification of wake effects in percentage terms (AS-036 and AS-037).
7. The assessments before the Examination present a broadly consistent picture, demonstrating a level of impact which can fairly be described as very small, being less than 1%, and not significant in EIA terms.
8. The EIA Regulations and the NPS are only concerned with environmental effects which are both likely and significant. The effects here do not pass that threshold.
9. The Applicant has previously explained the reasons why the imposition of a requirement following the model of Requirement 25 of the Awel y Mor Offshore Wind Order 2023 would not be appropriate as it fails the policy tests for requirements (REP2-051).
10. The Orsted IPs and the Equinor IPs instead seek the imposition of protective provisions, requiring both mitigation of wake effects through further design and the payment of a commuted sum representing the total loss of revenue for six offshore wind farms prior to commencement of construction of the Project. The imposition of protective provisions, which have not been agreed by the Applicant must logically be subject to the same tests as the imposition of requirements, particularly in light of the criminal sanctions for breach. The proposed protective provisions fail the tests for the imposition of requirements, as well as broader principles of legal certainty, and there is no basis in law, policy, precedent or evidence for the requested payment provisions.

1 Introduction

11. This document provides the Applicant's Deadline 6 Submissions on Wake Loss Matters. In particular, this Submission responds to the Action Points arising from Issue Specific Hearing (ISH) 8 held on Wednesday 19 March 2025 and to the submissions made by Interested Parties (IPs) at Deadline 5 (REP5-157 and REP5-176) and between Deadlines 5 and 6 on 28 March 2025 (AS-036 and AS-037).
12. This Submission follows the below structure:
    a. the applicability of the policies in NPS EN-3 (Section 2);
    b. the siting and design requirements under NPS EN-3 (Section 3);
    c. the policy requirement to carry out an assessment (Section 4); and
    d. the conclusions for decision-making (Section 5).
13. Nine IPs maintain objections to the Project on the grounds of wake loss effects. These IPs are as follows:
    a. Hornsea 1 Limited;
    b. Breesea Limited, Soundmark Wind Limited, Sonningmay Limited and Optimus Wind Limited (the Hornsea 2 Companies);
    c. Race Bank Wind Farm Limited,

    (together, the Orsted IPs);
    d. Equinor New Energy Limited on behalf of Scira Extension Limited and Dudgeon Extension Limited (as developer of the Sheringham Shoal and Dudgeon Extension Offshore Wind Farm projects);
    e. Scira Offshore Energy Limited; and
    f. Dudgeon Offshore Wind Limited,

    (the latter three known as the Equinor IPs).
14. Following the submission of the Applicant's Wake Loss Technical Note (REP4-114), Orsted Hornsea Project Three (UK) Limited, Orsted Hornsea Project Four Limited, Lincs Wind Farm Limited and Westermost Rough Limited took the decision to withdraw their representations in relation to this matter (REP4A-125a).
15. The Applicant notes Action Point 3 from ISH8 (EV13-008), which required the Ørsted IPs and the Equinor IPs to have further engagement with the Applicant regarding policy tests and protective provisions and to provide an agreed final statement by Deadline 6. The Applicant has agreed the following statements:
16. The Ørsted IPs met with the Applicant on 25 March 2025, in which meeting it was agreed that the parties hold fundamentally differing positions regarding the policy tests and the need for protective provisions, with both parties intending to set out their positions in writing at Deadline 6 for the Examining Authority's consideration.

17. Action Point 3 from ISH8 (EV13-008), required the Applicant and Equinor IPs to have further engagement regarding policy tests and protective provisions and to provide an agreed final statement by Deadline 6. The Applicant and the Equinor IPs met on 31 March 2025, in which meeting it was agreed that the parties hold fundamentally differing positions regarding the policy tests and the need for protective provisions, with both parties intending to set out their positions in writing at Deadline 6 for the Examining Authority's consideration. The discussions between the Applicant and the Equinor IPs at the meeting on 31 March 2025 also addressed Action Point 1 and Action Point 2 from ISH8 (EV13-008). With respect to Action Point 1 it was agreed that Revision 2 of the Wake Impact Assessment Report (document reference 23.6 submitted at Deadline 6) would be shared with the Equinor IPs prior to Deadline 6 and that this revision would be undertaken on the basis of an updated Dudgeon Extension Project (DEP) indicative wind turbine generator (WTG) layout such that no WTGs are placed within the obstacle free zone for navigational safety in the northwestern part of the DEP North array area, which is secured in Requirement 35 of The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. It was agreed that such a layout would represent a more realistic worst-case scenario and that on this basis Revision 2 of the Wake Impact Assessment Report [REP5-152] represents a suitable basis for the assessment of the Project's impacts due to wake effects.
18. The Equinor IPs and the Orsted IPs have both made further submissions in relation to wake loss matters on 27 and 28 March 2025 respectively (AS-036 and AS-037). Both IPs have stated that they intend to make further submissions on the policy position at Deadline 6. The Orsted IPs have stated that this approach was agreed with the Applicant during a recent meeting. That agreement was provided on the basis of the Applicant having sufficient opportunity to consider those submissions in advance of Deadline 6. As at 3 April 2025, no advance sight of those submissions has been provided by the Orsted IPs.
19. The Applicant notes that the Equinor IPs have reserved their view on the question of whether the wake effects of the Project are significant in EIA terms. As set out in section 4 of this Submission, this question has a material bearing on the policy analysis. By choosing to set out their position on this point only at Deadline 6, the Equinor IPs have deprived the Applicant of an opportunity to respond and properly test the stated position and, as such, their evidence should be given limited weight.

2 Applicability of the policies in NPS EN-3

20. The Applicant has previously highlighted that the question of the applicability of the policies relating to "Other offshore infrastructure and activities" to wake effects experienced by other offshore wind farms is the subject of a debate in the context of the Mona Offshore Wind Farm and the Morgan Offshore Wind Farm DCOs, which will fall to be determined by the Secretary of State (SoS) prior to determination of the application for development consent for the Project.
21. In this regard, the ExA's attention is drawn to the response to question Q1 OG 1.2 in the Applicant's Responses to the ExA's First Written Questions (REP2-051) and the summaries of oral case at ISH 2 held on 4 December 2024 (REP3-041) and ISH 8 held on 19 March 2025 (24.5).
22. As a matter of principle, the extent of and effects arising from any wake effects only becomes a relevant consideration for the ExA and the SoS in the event that the SoS decides against the applicants in relation to those applications.
23. In summary, the position advanced by the applicants in those cases is that, on a proper interpretation of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) and NPS EN-3, there is no requirement for an applicant for an offshore wind farm to conduct a detailed wake loss assessment and that the policy terms have been met.
24. The NPS paragraphs in question are the same as the provisions in the 2011 NPS. If the effect of those provisions was to require any new offshore wind farm development to assess wake loss effects on existing wind farms, that would have become a well-established practice in the industry by this point. That cannot be said to be the case. Indeed, it is notable that no wake loss assessments were considered to be required for any of the projects maintaining representations on this matter, nor were any objections made to the Orsted IPs and Equinor IPs' consented projects on the grounds of wake loss.
25. In the event that the SoS determines that the policies do apply, there is no significant issue in this case and no justification for any additional provisions in the DCO in light of the evidence before this Examination for the reasons set out in Sections 2 to 5 below.
26. If the SoS takes the view that the relevant policies under NPS EN-3 apply to the question of wake effects, the policy sets out a staged approach as to how such effects should be considered. First, paragraphs 2.8.44 to 2.8.50 set out the particular siting and design considerations applicable to interactions of offshore wind developments with other sea users.
27. Second, an assessment is carried out to establish the likely significant effects on other offshore infrastructure and activities following paragraphs 2.8.196 to 2.8.203 of NPS EN-3.
28. Finally, paragraphs 2.8.341 to 3.8.348 of NPS EN-3 set out how, following the results of that assessment, effects on other offshore infrastructure and activities should be considered in making decisions on development consent order applications for offshore wind proposals.

3 The siting and design requirements under the Energy NPSs

29. Siting and design considerations are multi-faceted. Paragraph 2.8.2 of NPS EN-3 explains:

    "To meet its objectives government considers that all offshore wind developments are likely to need to maximise their capacity within the technological, environmental, and other constraints of the development."

30. The Applicant has sited and designed the Project having appropriate regard to the full suite of technical, engineering and environmental factors that need to be considered when siting and designing an offshore wind farm proposal. The site selection and design process for the Project has undergone various iterations, involving early and regular engagement with stakeholders and informed by the collation of survey data, ongoing design refinement, the results of the EIA as they emerged and stakeholder feedback.

31. These considerations were incorporated into the Project at the earliest stages. Section 4 of Chapter 4 Site Selection and Alternatives of the ES (REP5-013) explains the process that was undertaken to identify the Array area. Paragraph 84 explains that "existing or proposed offshore wind farms plus buffer" were identified as a hard constraint on site selection. The Project was sited in accordance with requirements of The Crown Estate's Offshore Wind Leasing Round 4 process, including that projects may not be located within 7.5km of an existing offshore wind farm unless the owner of the offshore wind farm has given their written consent. In their response to the ExA's First Written Questions (REP2-080), The Crown Estate confirmed that the 7.5km buffer between wind farms specifically allowed for, amongst other matters, wake effects. Furthermore, The Crown Estate explained that the 7.5km buffer was an increase from the 5km buffer in place for Round 3 for the purpose of de-risking the Round 4 tender by providing additional mitigation and assurance to participants through limiting proximity.

32. Such a spacing requirement effectively and appropriately mitigates the potential wake impacts from the Project on other offshore wind farms. The evidence subsequently provided into the Examination has confirmed the validity of the Crown Estate's position by demonstrating the limited nature of wake effects in this case.

33. Since the original siting decisions, two further boundary reductions have taken place which have also had the effect of reducing overall wake effects.

34. As well as acknowledging the vast array of factors which must feature in offshore wind farm design, paragraph 2.8.2 of NPS EN-3 emphasises the need for offshore wind developments to maximise their capacity in order to meet the government's ambition to deploy 50GW of offshore wind capacity by 2030, with an expectation that substantially more offshore capacity will be needed beyond this to achieve net zero carbon emissions by 2050.[1]

[1] Paragraph 2.8.1, NPS EN-3

35. The need to maximise capacity is a consistent thread running through the Energy NPSs.[2] This is particularly key when considering the limits of any policy requirement to take wake effects into account in either the initial or detailed stages of design of an offshore wind farm. The evidence before the Examination shows that the wake losses between offshore wind developments are considerably smaller than those which take place within arrays.[3] Any design decision taken with the intention of mitigating external wake effects will likely have a greater consequence for generating capacity within the Project and an overall net reduction in renewable energy generation.
36. Paragraph 2.8.2, NPS EN-3 provides context for the later paragraphs of the NPS[4], which deal with the specific question of design as it relates to other offshore infrastructure and activities. Paragraph 2.8.44, NPS EN-3 acknowledges the potential for other offshore infrastructure to be a constraint imposed on the siting or design of offshore wind farms.
37. Thereafter, the focus of the paragraphs is on collaborative engagement with other offshore developers to facilitate greater co-existence or co-location.
38. The Applicant has undertaken an extensive programme of engagement with other offshore developers, owners and operators throughout the development of the Project. The pre-application phase of that engagement is summarised in Table 18.2 of Chapter 18, Infrastructure and Other Marine Users (REP5-035). That consultation included engagement with the Orsted IPs and the Equinor IPs.
39. The Applicant has engaged constructively with those IPs making representations in relation to wake effects throughout the Examination, as demonstrated by the withdrawal of representations on wake effects by four IPs at Deadline 4a.[5]
40. The Applicant notes that, despite having engaged with the Equinor IPs pre-application, including meetings since June 2021, no concerns relating to wake effects were raised by the Equinor IPs until 25 February 2025, after Deadline 4 of the Examination. As set out in Table 18.2 of Chapter 18, Infrastructure and Other Marine Users (REP5-035), the Orsted IPs raised the general issue of wake effects in pre-application consultation. The Applicant responded by explaining that the Project had been sited in accordance with TCE's leasing requirements and that this was considered to mitigate potential wake effects. There is nothing in the policy that requires an applicant to accept an onerous requirement relating to the future design of the Project simply because another offshore developer has raised general concerns relating to that topic.

[2] See also, for example, paragraph 2.8.25, NPS EN-3
[3] See Array Layout Yield Study (REP2-056)
[4] paragraphs 2.8.44 to 2.8.50
[5] Orsted Hornsea Project Three (UK) Limited, Orsted Hornsea Project, Lincs Wind Farm Limited and Westermost Rough Limited

4 The policy requirement to carry out an assessment

41. Paragraphs 2.8.196 to 2.8.203 set out the need for and extent of the requirement for an assessment of effects of an offshore wind project on other offshore infrastructure and activities.
42. Paragraph 2.8.197 sets out that where "*a potential offshore wind farm is proposed close to existing operational offshore infrastructure, or has the potential to affect activities for which a licence has been issued by government, the applicant should undertake an assessment of the potential effects of the proposed development on such existing or permitted infrastructure or activities*."
43. Paragraph 2.8.198 states: "[t]*he assessment should be undertaken for all stages of the lifespan of the proposed wind farm in accordance with the appropriate policy and guidance for offshore wind farm EIAs*."
44. Paragraph 2.8.198 explains that any assessment of effects on third party infrastructure ought to be carried out in accordance with the principles of environmental impact assessment. It is a well-established principle of environmental impact assessment, that such an assessment is only required in order to establish the likely significant effects of the project on the environment.[6]
45. Paragraph 4.3.10 of NPS EN-1 states that "*an applicant must provide information proportionate to the scale of the project*" and cross refers to the Guidance on EIA in the context of town and country planning applications. That guidance states: "*the emphasis should be on the "main" or "significant" environmental effects to which a development is likely to give rise. The Environmental Statement should be proportionate and not be any longer than is necessary to assess properly those effects*."
46. The Applicant has maintained throughout the Examination that wake effects arising from the Project cannot be said to be significant in EIA terms or material in policy terms. That position is supported by both general and site-specific analysis.
47. In the Applicant's Responses to Relevant Representations, the Applicant cited the non site specific study published by The Crown Estate which concluded that wake effects level off with approximately 10km separation between OWFs and, at separation distances over 20km, wake effects become "vanishingly small" (REP2-056). Of those IPs maintaining representations in relation to wake effects, all but the Dudgeon Extension Project are at or beyond the 20km distance, with Dudgeon Extension located 13.5km from the Project and well beyond the distance at which wake effects level off.

[6] See Regulation 14 and para 5, Schedule 4 of the infrastructure Planning (Environmental Impact Assessment) Regulations 2017

48. In response to comments from the Orsted IPs, the Applicant carried out an assessment of the external wake effects of the Project in the Wake Loss Technical Note (REP4-114). That assessment was supplemented at Deadline 5 by the Wood Thilsted Wake Impact Assessment Report (REP5-152). The Technical Note also included a sensitivity analysis of the effect of any wake impact on the Climate Change assessment undertaken in the ES. That sensitivity analysis was included in the updated ES Chapter 31 Climate Change submitted at Deadline 5 (REP5-100).
49. An updated version of the Wood Thilsted Wake Impact Assessment Report has been submitted at Deadline 6 to reflect the inclusion of a "no build" zone for the Dudgeon Extension Project and to include points of clarification following further discussion with the Orsted IPs.
50. The largest anticipated wake effect on any individual project concluded by that assessment is 0.89% (reduced from 1.05% when the "no build" zone for the Dudgeon Extension Project is taken into account), with the average wake effect being approximately 0.5%. The wake assessment carried out by the Orsted IPs at Deadline 4a (REP4a-125a) sets out a maximum wake effect on any of the Orsted projects of 0.74%.
51. On 28 March 2025, both the Equinor IPs and the Orsted IPs made submissions in which they welcomed the submission of the Wood Thilsted Wake Impact Assessment Report submitted at Deadline 5, confirmed that it provides an increased level of independence in the assessment of wake effects and that it provides "*a suitable basis for the assessment of impacts upon its assets and consented projects in relation to wake effects*" (AS-036 and AS-037). There is therefore no outstanding disagreement between the Applicant, the Orsted IPs and the Equinor IPs as to the methodology used or the quantitative results of the assessment.
52. The assessments before the Examination present a broadly consistent picture, demonstrating a level of impact which can fairly be described as very small, being less than 1%, and not significant in EIA terms.
53. There is no guidance that sets out a particular significance threshold in EIA terms for wake assessments. That said, the following points are of relevance when considering this issue.
54. In the Awel y Mor decision, there was no assessment of wake effects before the ExA or the SoS on which to reach a conclusion on significance. However, the figure of a 2% wake effect on an individual project was in that case considered sufficiently material to justify the imposition of a requirement. Whilst the Applicant emphasises that there are fundamental flaws in requirement 25 of the Awel y Mor Offshore Wind Farm Order 2023 such that it simply cannot be relied upon (see further discussion at section 5 below), the 2% figure remains the only precedent available on this matter. The wake effects arising from the Project as set out in the Wood Thilsted Wake Impact Assessment Report (23.6) are 0.89%, at most, with the average effect being 0.5%. i.e. half or a quarter of the effect in the Awel y Mor case.

55. At ISH8, the expert evidence of Mr Elderfield of Wood Thilsted was that the wake effects of the Project could properly be characterised as "relatively limited". The Array Yield Layout Study describes effects of 2% as "small" and effects in the region of 0.5% as "vanishingly small". Effects of a maximum of 0.89% or less cannot be described as "significant" in the ordinary, natural meaning of the term or as matters that ought to attract any material weight for the purposes of decision-making in this case.

56. The Applicant has also considered the role of wake effects in the climate change assessment and carried out a Carbon Payback Sensitivity Analysis (REP5-100). That sensitivity analysis considered two conservative hypothetical scenarios: that either a 0.5% or a 1.0% wake effect was applied on the gross annual electricity production figures of 15 neighbouring offshore wind farms, including those of the Orsted IPs and the Equinor IPs. Even taking the extremely precautionary scenario of 1.0% wake effect across all neighbouring offshore wind farms[7], the increase in the carbon payback period for the project was only a maximum of 0.4 years, with the total carbon payback period accounting for this wake effect only 3.5 years. Wake effects have no material bearing on the conclusions of significance for the climate assessment.

57. Both the Orsted IPs and the Equinor IPs have submitted some limited financial information into the Examination and asserted that the financial impact on their commercial operations is significant. Neither has even asserted that this is a significant effect in EIA terms. Indeed, it would be difficult to see how a purely financial loss to a private entity could be said to amount to an environmental effect and to fall within the remit of the matters set out in paragraph 4, Schedule 4 of the EIA Regulations.[8]

58. Notwithstanding the Orsted IPs' confirmation between deadlines in AS-037 that the Wood Thilsted Wake Impact Assessment is a "*a suitable basis for the assessment of impacts upon its assets and consented projects in relation to wake effects*", the Orsted IPs have queried whether the Wood Thilsted Wake Impact Assessment should be updated to include the cumulative wake effect on the Orsted IPs' assets as a result of the Dogger Bank South Offshore Wind Farm (as part of a reasonable estimate of cumulative effects).

59. The Applicant notes that, as there is no wake assessment in the public domain for the Dogger Bank South, the provision of an updated report taking account of the cumulative effect of Dogger Bank South would be a considerable undertaking, including the preparation of an assumed layout, which has not been possible in the time available.

[7] An effect of this level is only predicted on one project in the Wood Thilsted Wake Impact Assessment Report (REP5-152)

[8] i.e. population, human health, biodiversity, land, soil, water, air, climate, material assets, cultural heritage and landscape

60. In any event, the Applicant's view, based on expert advice, is that an updated analysis to include Dogger Bank South as a cumulative project is not required in light of the distance between the Orsted assets and Dogger Bank South (being c. 41km at the closest point between Dogger Bank South East and Hornsea Two and Hornsea Four) and the fact that Dogger Bank South is not in the prevailing wind direction. The distance between the Orsted assets and Dogger Bank South East is akin to that between ODOW and Hornsea Four, which according to the Wood Thilsted Report, results in a predicted impact of -0.07%. On this basis, as the contribution of Dogger Bank South is likely to be extremely small, the Applicant considers that carrying out additional modelling would not be of any real utility.

61. Furthermore, even if the conclusions of that updated analysis were to show that there was a significant cumulative impact, the evidence before the Examination is that the contribution of the Project to that effect would be so small that any significant cumulative impact would be as a result of the cumulative projects, rather than the Project. Indeed, the evidence before the Examination also suggests that when further offshore wind farms are added to the analysis, the wake impact attributed to the Project decreases (see Tables 2 and 3 of the Wood Thilsted Wake Impact Assessment). The wake loss attributed to those third party projects would be a matter for assessment on each of those third party projects and therefore further analysis would not change any of the conclusions for decision making for the Project as set out in this Submission.

62. If, however, the ExA or the SoS take a different view of the utility of this request, the proper approach would be to request further information from the Applicant.

63. A further request was made to update the Carbon Payback Sensitivity Analysis to include, "*as a realistic worst-case scenario, lifetime extension and early decommissioning of existing waked projects*". Such an update is unnecessary. On the evidence before this Examination, it has not been demonstrated that early decommissioning is a real risk (see further at paragraphs 73 to 102 below). EIA is not intended to assess every possible significant effect, however unlikely.[9]

[9] An Taisce v. Secretary of State for Energy and Climate Change [2014] EWCA Civ 1111, per Sullivan LJ at [21]

5 The conclusions for decision making

The decision-making policies

64. The conclusion that wake effects are not significant in EIA terms is critical for the application of the policies set out in NPS EN-3 at paragraphs 2.8.342 to 2.8.348. The NPSs themselves are only concerned with environmental effects which are both likely and significant, as set out in paragraph 4.3.8 of NPS EN-1 (emphasis added):

"In this NPS and the technology specific NPSs, when used in relation to environmental matters the terms 'effects', 'impacts' or 'benefits' should be understood to mean likely significant effects, likely significant impacts, or likely significant benefits."

65. This is also consistent with the application of the mitigation hierarchy. Paragraph 4.3.4 of NPS EN-1 states (emphasis added):

"To consider the potential effects, including benefits, of a proposal for a project, the applicant must set out information on the likely significant environmental, social and economic effects of the development, and show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy. This information could include matters such as employment, equality, biodiversity net gain, community cohesion, health and well-being."

66. The policies set out at paragraphs 2.8.342 to 2.8.348 must be read in light of the above guidance on their interpretation in NPS EN-1. Those paragraphs relevant to the question of wake effects are set out below.

"2.8.342 Where a proposed offshore wind farm potentially affects other offshore infrastructure or activity, a pragmatic approach should be employed by the Secretary of State."

67. The introduction to this section at paragraph 2.8.342 makes it clear that the SoS should take a proportionate approach to this issue and that the weight given to wake effects in the planning balance should be proportionate to their extent. The assessments before the Examination make it clear that wake effects arising from the Project are limited. It follows therefore that limited weight should be given to wake effects in the planning balance.

"2.8.343 Much of this infrastructure is important to other offshore industries as is its contribution to the UK economy."

2.8.344 In such circumstances, the Secretary of State should expect the applicant to work with the impacted sector to minimise negative impacts and reduce risks to as low as reasonably practicable.

2.8.345 As such, the Secretary of State should be satisfied that the site selection and site design of a proposed offshore wind farm and offshore transmission has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries. Applicants will be required to demonstrate that risks to safety will be reduced to as low as reasonably practicable.

68. Paragraph 2.8.343 notes the importance of offshore industries in their contribution to the UK economy. That is consistent with the role of planning policy as managing development in the public interest. The reference to "economic loss" in paragraph 2.8.345 should therefore be read in the context of potential implications for the UK economy, not the private financial loss to an individual developer. No IP has asserted or demonstrated through evidence that any financial impact arising from wake effects would have a material effect on the UK economy.

69. Complete avoidance of any financial loss to any third party offshore wind farm as a result of wake effects is not possible and would be neither a necessary nor a pragmatic objective. It cannot therefore have been the intention behind the drafting of paragraph 2.8.345. At paragraphs 21 and 32 of the Equinor IPs' Deadline 5 Submission (REP5-157), the Equinor IPs state that they do not consider mitigation measures will be effective in addressing impacts in any event.

70. The Applicant's position on site selection and design as relevant to wake effects is set out in Section 2 above. The Project was sited in accordance with requirements of The Crown Estate's Offshore Wind Leasing Round 4 process, including that projects may not be located within 7.5km of an existing offshore wind farm unless the owner of the offshore wind farm has given their written consent. This requirement was introduced taking account of wake effects, amongst other matters and mitigates wake effects. Insofar as the policies above apply to the Project, the Applicant has complied with them. No further mitigation is required.

71. Paragraph 2.8.347 relates to the question of viability, which is considered in detail at paragraphs 73 to 102 below. Paragraph 2.8.348 concludes this section of the policy with the following text:

"2.8.348 Providing proposed schemes have been carefully designed, and that the necessary consultation with relevant bodies and stakeholders has been undertaken at an early stage, mitigation measures may be possible to negate or reduce effects on other offshore infrastructure or operations to a level sufficient to enable the Secretary of State to grant consent."

72. The Applicant has demonstrated in this Submission that the Project has been carefully designed, thorough engagement with key stakeholders has been undertaken and, in the absence of any significant effects, no mitigation measures are required for effects to be reduced to a level sufficient to enable the SoS to grant consent for the Project.

Viability

73. Paragraph 2.8.347, NPS EN-3 is as follows:

2.8.347 Where a proposed development is likely to affect the future viability or safety of an existing or approved/licensed offshore infrastructure or activity, the Secretary of State should give these adverse effects substantial weight in its decision-making.

74. The policy test at paragraph 2.8.347 sets a high bar. That is only right in circumstances where, should that policy apply, substantial weight would be given against the grant of development consent for critical national policy infrastructure which has an established and urgent need set out in the Energy NPSs.

75. It is notable that, in the Awel y Mor decision, the ExA and the SoS determined that a wake effect of 2% on the Rhyl Flats Wind Farm located 5.1km away would not affect the viability of Rhyl Flats Wind Farm.
76. As the Applicant explained at ISH 8, neither the Orsted IPs nor the Equinor IPs have even asserted that that policy test is met, far less produced evidence which is capable of demonstrating that it is.
77. In their Deadline 5 submissions (REP5-157), the Equinor IPs using the following descriptions (emphasis added):
78. at paragraph 22, "**a commercial impact** to the Equinor IPs which **they** consider to be **material**";
    a. at paragraph 23, "**could** affect their viability";
    b. at paragraph 24, "**could** materially effect the project's competitiveness … **may** curtail … **could** impact"; and
79. at paragraph 25, "**may** be compromised **if** the viability … is impacted".
80. Similarly, the Orsted IPs state, in their Deadline 5 submissions (REP5-176) (emphasis added):
    a. at section 1, "having the **potential** to **threaten** the financial viability **of Lifetime extension**"; and
    b. at section 3.2, "it is **too early to determine** the financial viability of Lifetime Extension".
81. In each case, the relevant parties have only asserted that financial viability may be affected, not that the Project is *likely* to affect future viability of these assets as required in order to engage the policy tests.
82. At ISH8, the Equinor IPs sought to argue that the meaning of paragraph 2.8.347 is that the policy is engaged if the Project is likely to have *an effect on* future viability. That is plainly not what the policy states. The policy uses the phrase "likely to affect" deliberately to set a high bar. It is plainly inappropriate for an Interested Party to seek effectively to reformulate policy in an NPS to compensate for the inadequacy in the evidence it has adduced, and telling that it has nevertheless chosen to do so.
83. The submissions by each of the Orsted IPs and the Equinor IPs between Deadlines 5 and 6 do nothing to advance that case (AS-037 and AS-036 respectively). The Equinor IPs conclude that (emphasis added):

    "***Any*** *wake losses from ODOW will represent* ***an increased risk to the commercial viability*** *of all assets included in this analysis."*
84. It cannot be correct that "any" wake losses from ODOW, no matter how small, will represent an increased risk to the commercial viability of the Sheringham Shoal, Dudgeon and Sheringham and Dudgeon Extension projects. That position is at odds with the withdrawal of representations by other IPs where it has been demonstrated through assessment that wake effects on those projects are *de minimis* and with the Equinor IPs' suggestion of the mitigation requirements in the protective provisions as a proposed solution.

85. In any event, the policy is not engaged by a mere asserted "risk" to future viability. The effect on future viability must be shown on the evidence to be "likely".
86. The Equinor IPs go on to explain that, in relation to the Sheringham Shoal and Dudgeon Extension project, wake effects could mean the difference between being successful in a Contract for Difference auction and not. Whilst this eventuality is only a possibility, rather than a likelihood, even were it to occur, the Equinor IPs do not state that, absent any CfD support, the Sheringham Shoal and Dudgeon Extension project would be unviable.
87. Both the Orsted IPs and the Equinor IPs identify the decision on whether or not to extend the life of the projects in question as being affected by wake effects. In relation to the Sheringham Shoal and Dudgeon wind farms, the Equinor IPs only state that wake effects "**reduces** the **potential** of life extension" (emphasis added). Again, even taking the Equinor IPs case at face value, this is only a potential outcome, not a likely one.
88. The Orsted IPs' updated Financial Impact Assessment concludes: "*The significant revenue losses will have a direct bearing on lifetime extension decisions and are more likely than not to result in the earlier decommissioning of one or more of the three wind farms considered than would otherwise have been the case*."

    This flatly contradicts the statement made in section 3.2 of the Orsted IPs' submissions made as recently as Deadline 5 in which the Orsted IPs state "*Given the age of these assets, **it is too early to determine** the financial viability of Lifetime Extension*". Given (a) only two weeks had passed between these two statements, (b) the Orsted IPs attention was drawn to this statement at ISH8 and no suggestion was made on its behalf that the statement was incorrect, out of date or should not be taken as read for any other reason, and (c) the overall financial impact in Table 1 of the Executive Summary has **reduced** with the publication of the updated financial analysis on the basis of the Wood Thilsted Report, it is unclear to the Applicant how projects that may have had a future a fortnight previously have since become unlikely to be viable. The most likely explanation is that the position as expressed at Deadline 5 was thought to be correct, but Orsted has belatedly realised that it is fatal to its attempt to justify the imposition of its proposed PPs.
89. In any event, the stated threat to viability is entirely unevidenced by either the Orsted IPs or the Equinor IPs.
90. Whilst a novel matter with which to grapple in the context of offshore wind development, the question of viability arises frequently in the context of terrestrial planning and its essential nature and evidential requirements are well-understood.
91. At its core, a viability assessment requires a balancing exercise between cost on one hand and revenue on the other, with the aim of working out what an acceptable level of profit would be.
92. The evidence set out in the Financial Impact Assessments submitted by the Orsted IPs and the Equinor IPs simply does not provide any such assessment. All that is provided is the claimed "indicative view" of financial impact viewed through the limited lens of the estimated drop in revenue. At best, that can only provide one side of the balancing exercise required to assess viability. No conclusion can be reached on viability without a view of both cost and revenue.

93. The Orsted IPs and Equinor IPs were both legally represented at ISH8 when it was made clear on behalf of the Applicants that in providing only one possible element of a viability assessment their evidence was incapable of triggering the policy because assessing viability required the assessment and balancing of a range of inputs. It is telling that they have nevertheless failed to fill the obvious lacuna in the evidence provided in support of their suggested PPs.

94. The UK Government has published guidance on the issue of viability in the planning regime.[10] That guidance sets out useful principles of how an assessment of viability ought to be carried out. In particular, the guidance explains:

"What are the principles for carrying out a viability assessment?

Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return."

95. Under the heading of "Accountability", the guidance explains:

"Complexity and variance is inherent in viability assessment. In order to improve clarity and accountability it is an expectation that any viability assessment is prepared with professional integrity by a suitably qualified practitioner and presented in accordance with this National Planning Guidance. Practitioners should ensure that the findings of a viability assessment are presented clearly. An executive summary should be used to set out key findings of a viability assessment in a clear way."

The inputs and findings of any viability assessment should be set out in a way that aids clear interpretation and interrogation by decision makers. Reports and findings should clearly state what assumptions have been made about costs and values (including gross development value, benchmark land value including the landowner premium, developer's return and costs)…"

96. The financial analyses provided by the Equinor IPs and the Orsted IPs fall far short of this standard.

97. The financial information that has been submitted is significantly caveated. On page 4 of the Financial Impact Assessment submitted by the Orsted IPs, the Orsted IPs state: "*This assessment **does not intend to represent the Ørsted IPs' internal view of the financial impac**t which cannot be shared publicly due to its reliance on confidential information."* (emphasis added).

98. The same caveat is provided on page 7 in section 3 of the assessment provided by the Equinor IPs.

[10] Guidance: Viability, Department for Levelling Up, Housing and Communities (last updated 12 December 2024)

99. The presence of this significant caveat means that the ExA and Secretary of State can place no material weight on the limited evidence that the document does contain. If it does not even represent the Orsted IPs and Equinor IPs' own views it would be unreasonable to expect the Secretary of State to rely on it for the purposes of assessing the likely effect on viability. The Orsted IPs assert that the Financial Impact Assessment demonstrates a significant financial impact on its projects that justifies protection through protective provisions in the DCO, but the caveat on page 4 of the Financial Impact Assessment is clear that the numbers presented within it are not representative of Orsted's actual view even of the stated revenue reduction.

100. Both the Orsted IPs and the Equinor IPs state that the amount of financial information which can be submitted into the Examination is limited due to its commercial sensitivity, but that does not assist them in making their case. At best it is simply an explanation as to why they have chosen not to adduce the evidence needed to demonstrate that the policy in the NPS is triggered. The Orsted IPs and the Equinor IPs could have chosen to respond to that difficulty by putting forward a set of objective standards that demonstrate that, in the face of the financial headwinds that arise as a consequence of the wake effects from the Project and a suitable set of robust assumptions as to the other necessary elements of a credible viability assessment, no reasonable developer would proceed with the Orsted or Equinor projects in question. They have chosen not to do so and as a result have given the decision-maker no evidential basis that could properly be held to justify the PPs that they seek to have imposed

101. It is incumbent on those arguing that the policy set out in paragraph 2.8.347 is engaged - and demanding the payment of very substantial sums through protective provisions as a result - to submit evidence that is at least capable of supporting that position and which follows relevant principles set out by Government in relation to viability in other consenting regimes.

102. No such evidence has been submitted. Absent that evidence, the policy is not engaged.

Control of the Project through requirements or protective provisions

103. The Applicant has demonstrated through assessment that the wake effects arising from the Project are not significant in EIA terms and not material in policy terms.

104. Paragraph 4.1.16 of NPS EN-1 is clear that the SoS should only impose requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects.

105. The Applicant has previously highlighted the fundamental flaws with Requirement 25 of the Awel y Mor Offshore Wind Farm Order 2023, the only precedent for a requirement relating to wake effects being imposed on a DCO (REP2-051).

106. Firstly, R25(1) involves an assessment of wake effects and subsequent "*design provisions to mitigate any such identified effects* [on the existing OWF] ***as far as possible***" (emphasis added). These must be submitted to and approved in writing by the Secretary of State. It is not clear to the Applicant how, in practical terms, the Secretary of State is to judge whether the design provisions mitigate the effects "as far as possible". For example, if the effect could be mitigated but at a net loss to overall generating capacity when the two offshore wind farms are considered together, the practical effect of this requirement would be to reduce the overall level of renewable energy generation across the two wind farms. This appears to the Applicant to be a reasonably foreseeable outcome in light of the comments in the Offshore Wind Leasing Programme Array Layout Yield Study (REP2-056) that wake losses between offshore wind developments are considerably smaller than those which take place within arrays.

107. Secondly, R25(1) gives no guidance as to how any conflicts with other design constraints, for example, shipping and navigation constraints or ground conditions would be resolved.

108. Finally, the Applicant notes that the principal interaction at issue in the discussion of wake effects at Awel y Mor was that between Awel y Mor and Rhyl Flats, i.e. a bilateral interaction. By contrast, the projects listed in the table above are at different points of the compass in comparison to the Project. This therefore introduces the very real possibility that, any layout adjustments which seek to mitigate the wake effects of the Project on one third party project increase the wake effect for another. The imposition of a Requirement in similar terms to R25 in the Awel y Mor DCO would be very difficult to comply with in practical terms, highly likely to result in delay to the discharge of that requirement and therefore likely to result in delay to the deployment of renewable electricity to be generated from the Project.

109. Neither a reduction in the capacity of the overall net position in terms of energy generation or delay to the deployment of critically important renewable electricity are outcomes which can be supported by the strong policy position in favour of renewable energy generation in NPS EN-1 and NPS EN-3. The Applicant therefore considers such a requirement to be imprecise and unreasonable.

110. No IP has sought to argue that the Applicant is wrong in its criticism of R25 of the Awel y Mor Offshore Wind Farm Order 2023 which reflects, in the Applicant's view, the merits of its position.

111. The Ørsted IPs' and Equinor IPs' submissions invite the imposition on the Applicant of a PP which is directly equivalent to the imposition of a requirement: it is no different in terms of its legal and practical effect and therefore, logically, in deciding whether or not to impose such a provision, whether it be PP or Requirement, the test must be the same including the need for necessity, precision, reasonableness, particularly given the criminal sanctions that arise for breach of a DCO.

112. The most recent set of protective provisions proposed by the Equinor IPs and the Orsted IPs on 28 March 2025 (AS-036 and AS-037 respectively) contain two limbs: (a) a requirement to mitigate; and (b) a requirement to pay a commuted sum.

113. The first limb requires the undertaker to, prior to commencement, take "*all reasonable measures to minimise Wake Loss effects on the* [Orsted IPs'/ Equinor IPs' projects]", subject to the proviso that the Applicant will not be required to materially reduce the generating capacity of the Project. There are several difficulties with this provision.

114. Firstly, an obligation to use "all reasonable measures" sets a high threshold to meet, akin to an "all reasonable endeavours" obligation.[11] Similarly, the requirement to "minimise" wake loss effects means to reduce as far as possible. An onerous provision of this nature is not justified in the context of a maximum predicted wake effect of less than 1%, which cannot be said to be significant or material.

115. Secondly, there is no certainty as to how an arbitrator would determine whether "all reasonable measures" had been taken or whether effects had been "minimised".

116. Thirdly, there is no certainty as to what constitutes "materially" in the context of any reduction in generating capacity, and no benchmark to determine materiality. It therefore effectively seeks inappropriately to pass on to an arbitrator the important public interest issue of when a wake loss impact is to be judged material.

117. Fourthly, the same challenges arise as with R25 of the Awel Y Mor Offshore Wind Farm Order 2023 as set out at paragraphs 107 and 108 above. Generating capacity is not the only design consideration and no guidance is provided on how other design considerations can and should be factored in.

118. Finally, the presence of the same provisions in favour of six different offshore wind farms at different points of the compass relative to the Project means that it is likely that any marginal benefit on wake effects at one project will have a negative effect on another. Furthermore, the decisions taken by the Orsted IPs and the Equinor IPs on their own consented projects will materially affect the wake effects at play across the region. The Wood Thilsted Wake Impact Assessment (23.6) supports this. In the Executive Summary, the report states (emphasis added): "*The average effect of ODOW on all the existing wind farms, with or without the future wind farms varies between* ***-0.58 %*** *(the* ***sole*** *effect of ODOW on existing projects) and -****0.51 %*** *(the effect of ODOW on existing projects,* ***in combination with all future wind farms****).*" i.e. the wake effect of the Project on operational assets is reduced when the consented wind farms (Hornsea Three and Four and the Sheringham and Dudgeon Extension Project) are factored in to the assessment.

119. At the end of the Examination, the position of the Equinor IPs is confused as to whether or not it is possible to mitigate. At paragraphs 21 and 32 of the Equinor IPs' Deadline 5 Submission (REP5-157), the Equinor IPs state that they do not consider mitigation measures to be capable of addressing the issue. The proposed inclusion of protective provisions requiring mitigation is directly at odds with the Equinor IPs stated position.

[11] The "all reasonable endeavours" obligation is only marginally less onerous in contract law than "best endeavours" – see further discussion in REP4a-118

120. The second limb requires a further assessment to be carried out to ascertain the wake effects of the Project based on its final design parameters. Following that assessment, the Applicant would be obliged to pay to the relevant parties, prior to commencement, the sums representing the loss of revenue incurred as a consequence of the percentage loss in energy yield.

121. In support of their positions, both the Orsted IPs and the Equinor IPs assert that it will be necessary to carry out a further wake loss assessment pre-construction. There is no policy basis for this position, particularly in the context of the findings of the Wood Thilsted Wake Impact Assessment (23.6), which the parties agree is sufficient to quantify the effects.

122. The Applicant notes that the proposed protective provisions have been updated to refer to a "commuted sum" but it is an advance compensation provision in all but name. This is entirely without merit or policy support and the Applicant notes that no precedent – DCO or other planning decision – has been cited by either party to justify why a commercial developer ought to be required to subsidise a commercial rival.

123. Furthermore, the payment of the "commuted sum", i.e. the sum calculated for the total loss, is required upfront, prior to commencement of the authorised development. This payment is therefore due pre-construction for a 0.5%-0.89% impact that only begins to occur on operation some four years later.

124. The operational period to be assumed for the impacted projects for the purposes of the calculation of the loss of revenue which forms the basis of the commuted sum payment is not stated. This is fundamental to the calculation of the figure and therefore the payment provisions cannot be precise enough to meet the required standard of legal certainty.

125. The commuted sum is calculated with reference to loss of revenue. As set out above, whether a project is viable depends on the profit a reasonable developer and its investors might reasonably expect to make. The protective provisions therefore calculate the commuted sum on the basis of the incorrect financial metric.

126. The protective provisions contain no link back to what would be required in order to tip the relevant projects back into viability, no doubt due to the complete absence of any evidence presented as to where that tipping point occurs. There is no requirement for the Orsted IPs or the Equinor IPs to continue to operate their projects following receipt of the payment, nor are there any claw-back provisions should they opt not to do so. The protective provisions could therefore require the Applicant to pay sums of £405 million (the total worst case identified by the Orsted IPs and the Equinor IPs) pre-construction and any of the IPs could then decide not to proceed with or to decommission any of their projects for reasons entirely unconnected with the Project and despite the upfront cash injection received from the Applicant. The inclusion of such a provision would be so obviously unreasonable, unfair, disproportionate and unduly burdensome in its operation as to be irrational in the *Wednesbury* sense. It is entirely unreasonable for the Orsted and Equinor IPs to seek such a provision as a matter of principle. The obvious unreasonableness of this element of their case is exacerbated in circumstances where both have failed to provide the evidence needed to enable the Secretary of State to determine whether an effect on viability is likely.

127. Neither policy nor law provides support for a payment of this nature. It is well understood that planning should not be used to protect commercial interests.[12] Had Government thought such a novel and surprising approach ought to be taken, Government would have made this clear in the NPS.

128. Finally, the Applicant notes that a similar suggestion of compensation was rejected in the Ayel y Mor decision as either a requirement or a protective provision.[13] In that case, such a payment was presented as a requirement for an indemnity for loss which was rejected both by the ExA and the Secretary of State as failing the policy test.

129. The protective provisions proposed by the Equinor IPs and the Orsted IPs therefore fail all six of the tests set out in paragraph 4.1.16 of NPS EN-1:

a. the wake assessments before the Examination demonstrate that wake effects are neither significant in EIA terms nor material in policy terms, and no evidence has been submitted that demonstrate that the Project would affect the future viability of another offshore wind farm, such that the proposed provisions requirements are not necessary to make the development acceptable;

b. the requirement to subsidise the private, financial interests of a commercial rival cannot be said to be a matter that is relevant to planning;

c. the effects on existing operational projects can be greater or less depending on the decision to progress the Equinor IPs' or Orsted IPs' own consented projects. In addition, the payments are required to be made upfront and irrespective of whether the impacts actually occur. Both points further decrease the relevance of the provisions to the Project being consented;

d. the requirement to mitigate fails the tests of enforceability and precision for the reasons outlined at paragraphs 114 to 118 above; and

e. any provision that requires the payment of a substantial sum to a third party developer to compensate for a sum equivalent to the total effects expected to occur over the entire operational lifetime when that effect would only begin to occur some four years later cannot be said to be reasonable in all other respects.

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12 R. v Doncaster MDC Ex p. British Railways Board [1987] 1 WLUK 392

13 See 5.14.83 of the Awel y Mor Offshore Wind Farm Examining Authority's Report, 20 June 2023, commenting on Appendix A of REP7-058, Rhyl Flats Wind Farm Ltd Deadline 7 Submission. The Secretary of State's position is set out at 4.178 of the Secretary of State's Decision Letter, 19 September 2023. Rhyl Flats Wind Farm Ltd requested that compensation provisions were included by way of an additional protective provision at section 12 of their Closing Submissions (REP8-109 of the Examination Library relating to the Awel y Mor Offshore Wind Farm).