

Ørsted IPs' – Response to Rfl

Introduction

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

This submission comprises the Ørsted IPs' response to the Secretary of State's Request for Information (“**Rfl**”) dated 12 August 2025. This submission responds to the question in the Rfl that is directed to the Ørsted IPs and also includes (at Appendix 1) an updated set of protective provisions for the benefit of those Ørsted IPs that maintain objections in relation to wake loss (being Hornsea 1, Hornsea 2 and Race Bank). The Ørsted IPs maintain (for the reasons set out in the examination of the Outer Dowsing Offshore Wind Project (the “**Outer Dowsing Project**”), particularly as summarised in the Ørsted IPs' Closing Submissions **[REP6-135]**) that protective provisions for the benefit of the Ørsted IPs should be included on the face of the DCO for the Outer Dowsing Project in order to afford the Ørsted IPs' assets necessary and proportionate protection.

Rfl Question

The Rfl states, at paragraph 13, as follows:

*The Secretary of State notes from the Ørsted IP's closing statement **[REP6-135]**, that the Applicant sent a cooperation agreement to Ørsted regarding protective provisions. Ørsted IPs and the Applicant are invited to provide an update on whether agreement has been reached on the protective provisions.*

The only cooperation agreement that has been discussed between the Applicant and the Ørsted IPs is the cooperation agreement regarding underwater noise between the Applicant and Orsted Hornsea Project Four Limited. This cooperation agreement does not relate to, and is entirely separate from, wake loss, protective provisions or proximity agreements. This cooperation agreement is being progressed, but is of a lower priority than the contents of the remainder of this submission.

The Applicant did not send a cooperation agreement to Ørsted regarding protective provisions. As set out in the Ørsted IPs' Closing Submissions **[REP6-135]**, negotiations were ongoing between the Applicant and the Ørsted IPs regarding a draft proximity agreement in relation to the Outer Dowsing Project's export cable corridor and the offshore array areas for the Lincs Offshore Wind Farm. These negotiations have only recently recommenced – the Ørsted IPs sent comments on this proximity agreement to the Applicant on 2 April 2025, and only received subsequent engagement from the Applicant in September 2025.

The Ørsted IPs wish to engage with the Applicant and progress this proximity agreement (and the subsequent proximity agreement for the Race Bank Offshore Wind Farm, which will use the general terms of the Lincs proximity agreement as a starting point for negotiations), but note that this proximity agreement is not a substitute for (nor do the contents particularly relate to) protective provisions. Indeed, as set out in the Ørsted IPs' Closing Submissions **[REP6-135]** and as per the latest set of protective provisions provided by the Ørsted IPs (see below), paragraph 9 of these protective provisions states that these agreements must be entered into prior to 6 months before the commencement of the authorised scheme (as defined in the protective provisions).

It was also stated in the Ørsted IPs' Closing Submissions **[REP6-135]**, in relation to wake impacts, that “*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” and also that “the Ørsted IPs consider that protective provisions for their benefit are included on the face of the Applicant’s DCO to afford necessary and proportionate protection to their assets. As previously stated, the Ørsted IPs would prefer to enter into a separate commercial agreement with the Applicant as a solution to the impacts on the Ørsted IPs’ assets and have sent the Applicant a document comprising the high-level ‘fundamentals’ that this agreement should cover. However, the Applicant stated in the aforementioned meeting with the Ørsted IPs that it does not consider this agreement to be necessary, which the Ørsted IPs note is contrary to the established norms of the industry; therefore, the Ørsted IPs seek the protective provisions”. The Ørsted IPs did note that they “received a separate set of protective provisions for the benefit of Lincs Wind Farm Limited (with the contents proposed to be replicated for the protection of Race Bank Wind Farm Limited) from the Applicant”, but these protective provisions only related to proximity impacts and the Ørsted IPs clarified that “the Ørsted IPs provided comments back to the Applicant on these protective provisions **without prejudice to the position that the fuller set of protective provisions is required**” (emphasis added in **bold**).*

The Applicant has not engaged with the Ørsted IPs regarding the fuller set of protective provisions (an updated version of which is found at Appendix 1 to this submission) and therefore it is not the case that the Applicant “sent a cooperation agreement to Ørsted regarding protective provisions” as is stated at paragraph 13 of the RfI. The Ørsted IPs would welcome such engagement from the Applicant, or indeed any engagement in relation to a separate commercial agreement as a solution to the impacts on the Ørsted IPs’ assets. Until such time, though, the Ørsted IPs maintain that (for the reasons set out in the examination of the Outer Dowsing Project, particularly as summarised in the Ørsted IPs’ Closing Submissions **[REP6-135]**) that the fuller set of protective provisions for the benefit of the Ørsted IPs should be included on the face of the DCO for the Outer Dowsing Project in order to afford the Ørsted IPs’ assets necessary and proportionate protection.

Updated Protective Provisions

The topic of wake loss is, currently, subject to ongoing development and change. Since the examination of the Outer Dowsing Project concluded, the Ørsted IPs have held an objection on the grounds of wake loss in the examination of the Dogger Bank South Offshore Wind Farm Project (which has also now concluded). During that examination, and due to the evolving nature of the topic of wake loss since the conclusion of that examination, the protective provisions being sought by the Ørsted IPs have developed and an improved set has been produced. In order to ensure alignment across both projects, the Ørsted IPs are taking this RfI as an opportunity to provide these improved set of protective provisions for the benefit of those Ørsted IPs that maintain objections in relation to wake loss (being Hornsea 1, Hornsea 2 and Race Bank) imposed by the Outer Dowsing Project.

The need for these updated protective provisions remains the same as set out by the Ørsted IPs throughout the examination of the Outer Dowsing Project – the updated protective provisions provide necessary and proportionate protection of the Ørsted IPs’ assets and ensure that the interests of all parties are properly considered and balanced. The Ørsted IPs request that these protective provisions are included in full on the face of the DCO for the Outer Dowsing Project, if made, ahead of any previous version submitted by the Ørsted IPs. As stated above, the Ørsted IPs would welcome engagement from the Applicant on these protective provisions, but do not expect this engagement to be forthcoming given the Applicant’s stance on this matter.

The protective provisions put forward by the Ørsted IPs would enable the Applicant and the Ørsted IPs to control the procedure to be followed – either by entering into a Wake Loss Agreement (as defined in the protective provisions), or alternatively by agreeing, or by allowing a jointly-appointed expert to determine, a Wake Loss Mitigation Scheme (as defined in the protective provisions). This is how decision-making linked to assessment and agreement has traditionally been managed in the industry, and this approach would shift the process of managing and adjudicating upon this technically complex and likely time-consuming matter from the Secretary of State to the wind farm owners or their jointly-appointed independent third-party expert.



Pinsent Masons

For completeness, the Ørsted IPs note that they consider protective provisions to be the most appropriate solution for wake loss impacts on the face of the DCO for this project (i.e. ahead of a DCO requirement).



Pinsent Masons

APPENDIX 1

UPDATED PROTECTIVE PROVISIONS FOR THE BENEFIT OF THE ØRSTED IPs

FOR THE PROTECTION OF HORNSEA 1 LIMITED, BREESEA LIMITED, SOUNDMARK WIND LIMITED, SONNINGMAY WIND LIMITED, OPTIMUS WIND LIMITED, RACE BANK WIND FARM LIMITED AND LINCS WIND FARM LIMITED

Application

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the relevant Ørsted IPs.

Interpretation

2. In this Part of this Schedule:

“AEP” means annual energy production;

“authorised scheme” means Works Nos. 1, 2, 4 and 8 described in Part 1 of Schedule 1 to the Order or any part of that work;

“GW” means gigawatts;

“Hornsea One Offshore Wind Farm” means the 1.2 GW wind farm located 120 kilometres off the Yorkshire coast;

“Hornsea Two Offshore Wind Farm” means the 1.3 GW wind farm located 89 kilometres off the Yorkshire coast;

“Lincs” means Lincs Wind Farm Limited (company number SC213646, with registered office at 13 Queens Road, Aberdeen, AB15 4YL);

“Lincs Offshore Wind Farm” means the 270 MW wind farm located 8 kilometres off the east coast of England, near Skegness in Lincolnshire;

“Lincs Proximity Agreement” means an agreement setting out the technical and commercial terms governing the interaction between the authorised scheme and the Lincs Offshore Wind Farm;

“MW” means megawatts;

“relevant Ørsted IP” means all or any of Hornsea 1 Limited (company number 07640868), Breesea Limited (company number 07883217), Soundmark Wind Limited (company number 10721881), Sonningmay Wind Limited (company number 10722635), Optimus Wind Limited (company number 07883284) or Race Bank as the context requires. The registered office for each relevant Ørsted IP is 5 Howick Place, London, SW1P 1WG;

“relevant project” means all or any of the Hornsea One Offshore Wind Farm, the Hornsea Two Offshore Wind Farm or the Race Bank Offshore Wind Farm as the context requires.

“Race Bank” means Race Bank Wind Farm Limited (company number 05017828, with registered office at 5 Howick Place, London, SW1P 1WG);

“Race Bank Offshore Wind Farm” means the 573 MW wind farm located 17 miles off Blakeney Point on the North Norfolk coast and 17 miles off the Lincolnshire coast at Chapel St Leonards;

“Race Bank Proximity Agreement” means an agreement setting out the technical and commercial terms governing the interaction between the authorised scheme and the Race Bank Offshore Wind Farm;

“Wake Loss” means the total modelled impact of the reduction in AEP at a relevant project as a result of wake impacts from the authorised scheme;

“Wake Loss Agreement” means an agreement between the undertaker and the relevant Ørsted IP to address the impacts of Wake Loss caused by the authorised scheme in respect of the relevant project;

“Wake Loss Assessment” means an assessment of the Wake Loss on the relevant project caused by the authorised scheme that is commissioned and agreed between the undertaker and the relevant Ørsted IP pursuant to paragraph 4(1);

“Wake Loss Mitigation Scheme” means a scheme agreed between the undertaker and the relevant Ørsted IP, or in the absence of such agreement, determined by an independent third party expert appointed under paragraph 4, to provide mitigation in accordance with paragraph 4(2); and

“wind turbine generator” has the meaning defined at article 2(1).

Mitigation

3. The undertaker may enter into a Wake Loss Agreement with each relevant Ørsted IP in respect of its relevant project. If a Wake Loss Agreement has been entered into and remains in force with a relevant Ørsted IP, then paragraphs 4 to 8 of this Part of this Schedule will not apply in respect of the relevant project.
4. (1) No less than one year prior to first installation of a wind turbine generator, the undertaker and the relevant Ørsted IP shall agree the appointment of one or more independent third party experts to undertake a Wake Loss Assessment, which shall:
 - (a) take account of any design, technical or operational mitigations that have been, or that will be, implemented in the final design of the authorised scheme to reduce Wake Loss; and
 - (b) determine any residual Wake Loss in respect of each relevant project.(2) No less than six months prior to first installation of a wind turbine generator, the undertaker and the relevant Ørsted IP shall agree the Wake Loss Mitigation Scheme, which shall include, but not be limited to:
 - (a) provisions that secure the implementation of any design, technical or operational mitigations referred to in sub-paragraph (1)(a);
 - (b) the mechanism for quantifying any financial loss caused to each relevant project as a consequence of any residual Wake Loss identified in the Wake Loss Assessment;
 - (c) any financial loss per annum caused to each relevant project; and
 - (d) the payment mechanism and timescales for mitigating such financial loss.(3) In the absence of agreement under sub-paragraph (2), the undertaker and the relevant Ørsted IP shall (without unreasonable delay) agree the appointment of an independent third party expert to approve or determine such Wake Loss Mitigation Scheme. That expert shall not approve or determine such Wake Loss Mitigation Scheme without first consulting with the undertaker and the relevant Ørsted IP and taking into account any written representations made by the undertaker and the relevant Ørsted IP provided that any written representations are provided to that expert by the undertaker and the relevant Ørsted IP within 40 working days.
- (4) In the event that the design, technical or operational mitigations referred to in sub-paragraph (1)(a) reduce the Wake Loss on the relevant project to zero and such reduction is secured within the Wake Loss Mitigation Scheme pursuant to sub-paragraph 2(a), then that Wake Loss Mitigation Scheme may exclude the matters in sub-paragraphs 2(b), 2(c) and 2(d).

5. The Wake Loss Mitigation Scheme must be implemented as approved for the lifetime of the authorised scheme.
6. In the event that a relevant project ceases to be operational earlier than accounted for in the Wake Loss Assessment and the Wake Loss Mitigation Scheme, the obligation under paragraph 5 in respect of that relevant project shall no longer be in effect.
7. (1) The undertaker must not commence installation of any wind turbine generator unless a guarantee or alternative form of security in respect of the total liabilities of the undertaker under the Wake Loss Mitigation Scheme is in place.

(2) The form of guarantee or security referred to in sub-paragraph (1), and the amount guaranteed or secured, must be approved by the relevant Ørsted IP (such approval not to be unreasonably withheld) and deposited with the Secretary of State.

(3) A guarantee or other security in accordance with this paragraph 7 that guarantees or secures the undertaker's payment to mitigate the effects of Wake Loss in accordance with the relevant Wake Loss Mitigation Scheme is to be treated as enforceable against the guarantor or provider of security by any person to whom such mitigation is properly payable and must be in such a form as to be capable of enforcement by such a person.
8. Paragraphs 4 to 7 of this Part of this Schedule shall cease to have effect if a national scheme for assessment and compensation and/or mitigation of Wake Loss effects prescribing a scale for calculation of Wake Loss impacts and a mechanism for the payment of any compensation caused by such Wake Loss impacts has legal effect provided that:
 - (a) the authorised scheme and the relevant project are within the scope of the relevant national scheme;
 - (b) the undertaker has complied with the requirements of the relevant national scheme; and
 - (c) the undertaker and the relevant Ørsted IP, following review of any such national scheme and acting reasonably, agree to paragraphs 4 to 7 ceasing to have effect.

Proximity Agreements

9. Prior to the date 6 months before the commencement of the authorised scheme, the undertaker will enter into the Race Bank Proximity Agreement with Race Bank and the Lincs Proximity Agreement with Lincs, unless otherwise agreed in writing.

Disputes

10. Any difference under the provisions of this Part of this Schedule must be, unless otherwise agreed in writing between the undertaker and the relevant Ørsted IP, determined by arbitration in accordance with article 39 (arbitration).