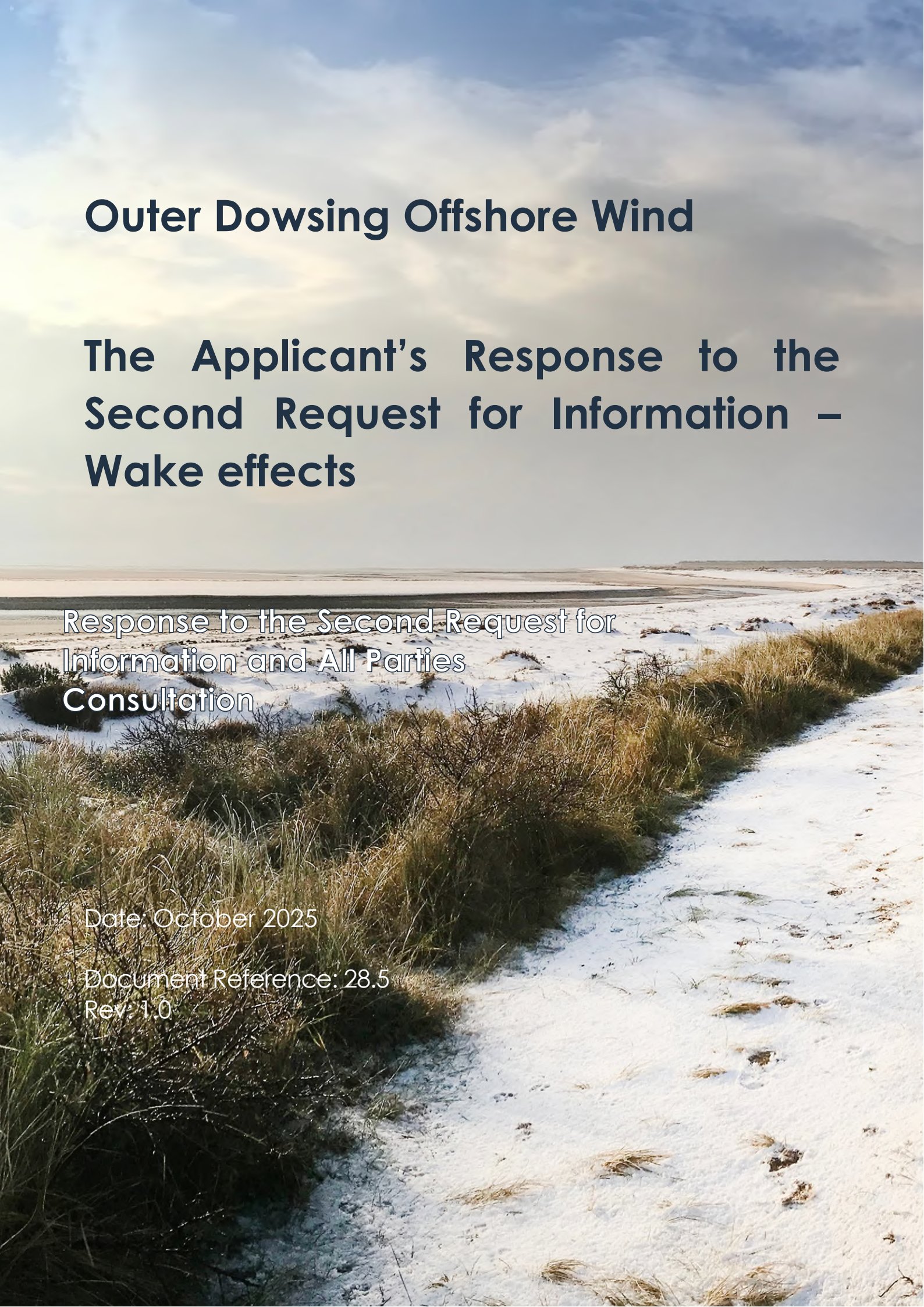
Outer Dowsing Offshore Wind

The Applicant's Response to the Second Request for Information – Wake effects



Response to the Second Request for Information and All Parties Consultation

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Acronyms & Definitions

Abbreviations / Acronyms

Abbreviation / Acronym	Description
AEP	Annual Energy Production
DCO	Development Consent Order
EIA	Environmental Impact Assessment
ExA	Examining Authority
ISH	Issue Specific Hearing
IP	Interested Party
NPS	National Policy Statement
ODOW	Outer Dowsing Offshore Wind (The Project)
SoS	Secretary of State

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 Development (GULF)), trading as Outer Dowsing Offshore Wind. The Project is being developed by Corio Generation, TotalEnergies and GULF.
AyM Requirement	Requirement 25 of the Awel y Mor Offshore Wind Farm Order 2023
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.
Mona Decision	The Secretary of State's Decision to grant the development consent order for the Mona Offshore Wind Farm dated 4 July 2025
Mona ExA	The Examining Authority appointed to examine the application for the Mona Offshore Wind Farm DCO
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.
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 Response to: (a) the Secretary of State's (SoS) Second Request for Information dated 10th October 2025; and (b) the submissions made by the Ørsted IPs and the Equinor IPs following the SoS's First Request for Information dated 12th August 2025.
2. The Applicant reiterates its submissions at Deadline 6 of the Examination (REP6-120) that the Applicant has complied with the policies relating to "*other offshore infrastructure and activities*", including the application of those policies as they relate to the matter of any wake effects arising from the Outer Dowsing Offshore Wind Farm (the **Project**) on third party offshore wind farms.
3. The Applicant has undertaken the required assessment which demonstrates that the wake effects of the Project are very small, being less than 1%, and neither material in policy terms nor significant in Environmental Impact Assessment (EIA) terms.
4. Those parties maintaining objections on the grounds of wake effects have agreed with the methodology used by the Applicant's independent expert consultants to carry out the assessment of wake effects and the conclusions reached in relation to the quantification of wake effects in percentage terms.
5. That being the case, there remains no justification for the imposition of any restrictions on the DCO to address the matter of wake effects. The protective provisions sought by the Ørsted IPs and the Equinor IPs are entirely inappropriate, having no basis in law, policy or precedent. This is unchanged by the decision by the SoS to grant the Mona Offshore Wind Farm Order 2025.
6. The Applicant's firm view is that it would be inappropriate to impose a restriction on the DCO for the Project in the form of Requirement 29 of the Mona Offshore Wind Farm Order 2025.
7. Without prejudice to those submissions, and for the sake of completeness, the Applicant has drafted a requirement which is intended to address the deficiencies with the Mona Requirement in terms of precision, relevance to planning, relevance to the development and enforceability. It should be stressed, however, that any such requirement could only properly be imposed by the SoS in the event that he concluded on the evidence in this case that it was also both necessary and reasonable in all other respects, notwithstanding the Applicant's submissions on those two issues.

1 The Applicant's Position on Wake Effects

8. Throughout the Examination, GT R4 Limited (the **Applicant**) made submissions in writing and at hearings on the matter of wake effects,[1] brought together in the Applicant's Submissions on Wake Loss Matters (REP6-120) at Deadline 6.
9. To recap, the Applicant's position at the close of Examination is summarised as follows:
    a. the question of the applicability of the policies in National Policy Statement (NPS) EN-3 relating to "*other offshore infrastructure and activities*" to wake effects would fall to be determined by the Secretary of State (SoS) in relation to the Mona Offshore Wind Farm and the Morgan Offshore Wind Farm prior to determination of the application for development consent for Outer Dowsing Offshore Wind (the **Project**). The extent of and effects arising from any wake effects would only be a relevant consideration for the SoS in the event that the SoS determined that those policies were applicable to the matter of wake effects;
    b. if the SoS did determine that the policies apply to the wake effects of proposed offshore wind farms on other offshore wind farms, the Applicant has undertaken the required assessment which demonstrates that the wake effects of the Project are very small, being less than 1%, and neither material in policy terms nor significant in Environmental Impact Assessment (EIA) terms;
    c. those Interested Parties maintaining objections on the grounds of wake effects[2] have agreed with the methodology used by the Applicant's independent expert consultants to carry out the assessment of wake effects and the conclusions reached in relation to the quantification of wake effects in percentage terms; and
    d. the primary matter of substance between the parties is the consequence of the conclusions of the assessment for the SoS's decision making on the application for development consent for the Project. The Ørsted IPs and the Equinor IPs maintain that protective provisions ought to be imposed on the Development Consent Order (DCO) for the Project. The Applicant maintains its position that the imposition of any restriction on the Project's activities to deal with the matter of wake effects, either by way of requirement or protective provisions, would fail the tests for imposing such restrictions and that there is no basis in law, policy, precedent or evidence for the payment provisions requested by the Ørsted IPs and the Equinor IPs.

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[1] PD1-071; REP2-051; REP2-056; submissions at ISH2 (summarised in REP3-041); REP4-110; REP4-114; REP4a-114; REP4a-115; submissions at ISH6 (summarised in REP4a-117); REP4a-119; REP4a-120; REP5-150; REP5-152; REP6-108;REP6-110; submissions at ISH8 (summarised in REP6-113); REP6-120; and REP6-121

[2] Namely: (1) Hornsea 1 Limited; Breesea Limited, Soundmark Wind Limited, Sonningmay Limited and Optimus Wind Limited (the Hornsea 2 Companies); and Race Bank Wind Farm Limited (together, the Orsted IPs); and (2) 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); Scira Offshore Energy Limited; and Dudgeon Offshore Wind Limited (the latter three known as the Equinor IPs).

10. Unless expressly stated otherwise, the Applicant maintains and reiterates these submissions.
11. In substance, very little has changed since the close of Examination. On 4 July 2025, the SoS issued his decision to grant development consent for the Mona Offshore Wind Farm (the **Mona Decision**) and, in so doing, he reached a conclusion on the question of the applicability of the policies relating to "*Other offshore infrastructure and activities*". The SoS concluded that the policies relating to "*Other offshore infrastructure and activities*" do apply to an application for a proposed offshore wind farm on other offshore wind farms.
12. The Applicant accepts, in light of the Mona Decision, that the policies relating to "*Other offshore infrastructure and activities*" apply to the SoS's consideration of the issue of wake effects in its determination of the application. Whilst this matter remained at large at the close of Examination, the Applicant has consistently approached this matter acknowledging that there is the potential for the SoS to reach this conclusion, and its evidence and submissions to the Examination were therefore entirely focussed on addressing the implications of such a conclusion. The effect of the Mona decision is simply that the SoS will need to consider and address that evidence and those submissions.
13. The Applicant has demonstrated in sections 3 to 5 of the Applicant's Submissions on Wake Loss Matters (REP6-120) that it is has complied with the policies relating to "*Other offshore infrastructure and activities*" in NPS EN-3. That is unaffected by the Mona Decision.
14. In this submission, the Applicant responds to the submissions made by the Ørsted IPs and the Equinor IPs following the SoS's Request for information dated 12 August 2025 (RfI 1) (C1-003 and C1-009 respectively) (**Section 2**), noting that their submissions postdated and (so far as they were able) provided their response to the Applicant's Deadline 6 submissions. The Applicant further notes that the SoS's Request for Information dated 12 August 2025 was addressed only to the Ørsted IPs and focused on the negotiation of the proximity agreement.
15. This submission goes on to re-emphasise that restrictions on the DCO to address the matter of wake effects could not reasonably be justified on the available evidence, and explains why the Mona Decision does not alter this position. Nonetheless, on a "without prejudice" basis and for the sake of completeness, , the Applicant has proposed a requirement, which addresses some of the deficiencies identified in requirement 25 of the Awel y Mor Offshore Wind Farm Order 2023 and requirement 29 of the Mona Offshore Wind Farm Order 2025 (**Section 3**). It should be stressed, however, that such a requirement could only properly be imposed in circumstances where the SoS has identified evidence capable of justifying it by reference to all of the tests for imposing a requirement, including necessity and reasonableness. No such evidence exists in this case.
16. The SoS has all the necessary information before him to allow him to reach a conclusion on the matter of wake effects and to make a decision on the application for the DCO. The SoS can and should, in light of the evidence before him, conclude that:
    a. the Applicant has complied with the policies relating to "*Other offshore infrastructure and activities";*

b. the assessment undertaken by the Applicant and agreed by the Interested Parties demonstrates that the impacts of the Project are *de minimis*; and

c. no further restrictions on the DCO to address the matter of wake effects are necessary or appropriate and that the protective provisions proposed by the Ørsted IPs and the Equinor IPs are not, and could not be, justified.

17. This submission raises no materially new or materially different substantive issues from those set out in detail at the close of the Examination (REP6-120). The other Interested Parties have had an opportunity to respond to those points and this submission responds to the submissions made by other Interested Parties since then. Therefore, no further consultation on this topic ought to be required and the Applicant invites the SoS to make a swift determination on the application.

2 The Applicant's Responses to Submissions by Interested Parties

18. In this section, the Applicant responds to the submissions by the Ørsted IPs and the Equinor IPs made following the SoS's Request for information dated 12 August 2025 (RfI 1) (C1-003 and C1-009 respectively).

19. The Applicant notes that RfI 1 requested an update from the Ørsted IPs on whether agreement had been reached on the protective provisions. No response was expressly sought from the Equinor IPs.

The Applicant's general comments on the submissions by the Ørsted IPs and the Equinor IPs

20. The context for the submissions made by the Ørsted IPs and the Equinor IPs is provided by the Applicant's comprehensive and detailed submissions on the matter of wake effects at Deadline 6 (REP6-120). It is striking and significant that, in their latest submissions, neither the Ørsted IPs nor the Equinor IPs have attempted to engage with the substantive points made by the Applicant on the issue of wake effects at the close of Examination. The Applicant's position is clear in relation to how the tests set out in the relevant policies of NPS EN-3 are to be applied and how the decision on the application ought to be made in light of the evidence that is before the SoS. The Ørsted IPs and the Equinor IPs have not responded to the Applicant's submissions on the application of the policy tests in the light of the available evidence, or to what the Applicant has said as to the evidence itself. In particular, neither party has sought to address the identified fatal deficiencies in the evidence that would be required to support their assertion that financial viability of the relevant projects would be affected, despite this issue having been squarely raised with them both in an Issue Specific Hearing and subsequently in detailed written submissions, and their having taken the opportunity to make further (uninvited) submissions on the topic of wake effects.

21. These omissions are telling. The Ørsted IPs and the Equinor IPs have not provided the SoS with any evidence, arguments or submissions which would be capable of supporting a rejection of the Applicant's submissions at Deadline 6 (REP6-120). There has been ample opportunity for them to do so, had that been thought possible. In those circumstances it would be reasonable for the SoS to infer that if they possessed any such evidence or had identified any such arguments, they would have put them before the SoS.

The requirement for financial compensation under the protective provisions

22. The Ørsted IPs and the Equinor IPs continue to assert that this matter should be dealt with by way of protective provisions which require a financial compensation payment to be made by the Applicant to each of the respective Interested Parties. As summarised in paragraph 10 of the Applicant's Submissions on Wake Loss Matters (REP6-120), there is no basis in law, policy, precedent or evidence for the requested payment provisions. Whilst the precise drafting of these provisions has been amended in their latest iteration, the principle remains that there is no basis for provisions requiring payment and no justification has been provided for the continued inclusion of these provisions.

23. The Applicant highlights that, since the conclusion of the Examination, the Government has published draft updated National Policy Statements, which make particular provision for the matter of wake effects. Paragraph 2.8.233 of draft NPS EN-3 states "*there is no expectation that wake effects can be wholly removed between developments, or that inter-project compensation arrangements are a necessary means to mitigate the impact of wake effects, although developers may opt to take such approaches outside of the planning process.*" That draft statement of policy reflects the point made on behalf of the Applicant at Deadline 6 that the payment of commercial compensation by one operator to another in this way is not a planning matter. That basic point of principle does not change (or disappear) simply because the suggested provision takes the form of a draft protective provision rather than a requirement. The legal effect is the same, and the issue is one of substance, not form.

24. The Ørsted IPs' and the Equinor IPs' proposed protective provisions are not supported either by the extant NPSs or the emerging draft policy. No justification has been advanced for their inclusion here that could rationally be relied upon by the SoS for the purposes of decision-making.

The Ørsted IPs' and the Equinor IPs' justification for the submission of the updated protective provisions

25. The only purported justification advanced by the Ørsted IPs and the Equinor IPs for the updated set of protective provisions is "alignment" and a "consistent approach" between the Project and the Dogger Bank South Offshore Wind Farm. That purported 'justification' is wholly misconceived for the following reasons:

    a. the imposition of these protective provisions has been robustly resisted by the applicant in the Dogger Bank South case, describing them as "unworkable and unreasonable"; and

    b. the policy tests in paragraph 4.1.16 of NPS EN-1 require restrictions to be "related to the development". The fact that similar provisions have been proposed by an Interested Party on another development, but neither accepted as appropriate by the applicant in that case or ultimately determined by the SoS to be appropriate, offers no sensible rationale for the imposition of protective provisions on the DCO for the Project where no project-specific justification for their inclusion has been made out.

The Ørsted IPs' and the Equinor IPs' justification for the mechanism proposed in the updated protective provisions

26. The Ørsted IPs and the Equinor IPs state that the protective provisions put forward would enable the Applicant and the Ørsted IPs/Equinor IPs (as appropriate) to control the procedure to be followed.

27. This is not reflected in the drafting. The practical effect of the drafting of the protective provisions would be that installation of the Project's turbines cannot take place unless the Wake Loss Mitigation Scheme is agreed or determined and security is provided for the undertaker's liabilities under the Wake Loss Mitigation Scheme. In the event that the Ørsted IPs/Equinor IPs and the Applicant disagree on any element of the Wake Loss Mitigation Scheme, the Applicant would be compelled to seek the appointment of an expert under paragraph 4(3). Even at that stage, in order to proceed, the parties would be required to agree the appointment of the expert. There would be no compelling event that would require the Ørsted IPs/Equinor IPs to act reasonably or reach a compromise if there was any disagreement as to the identity or terms of appointment of the expert. By contrast, the Applicant would in the meantime likely be suffering considerable additional cost and delay (both of which are contrary to the established public interest in the rapid deployment of renewable energy generating capacity and in lowering the cost of energy). The procedure to be followed under the draft protective provisions would be in the sole control of the Ørsted IPs/Equinor IPs.

28. It would be patently unreasonable and contrary both to the public interest and to key tenets of national policy that the progress of a project which is Critical National Priority infrastructure, and for which there is an urgent need and a clear public interest, rests entirely in the control of a commercial rival.

The Ørsted IPs' and the Equinor IPs' comments on engagement

29. In the Ørsted IPs' Response to RfI 1 (C1-003), the Ørsted IPs' Deadline 6 submission (REP6-135), the Equinor IPs' Response to RfI1 (C1-009) and the Equinor IPs' Deadline 6 submission (REP6-143), much is made of the need for engagement between the parties. This being the case, the Applicant finds it all the more surprising that a revised set of protective provisions has been submitted by both Interested Parties, in circumstances where this was not requested by the SoS, and with no attempt by either Interested Party to engage with the Applicant on the terms of the protective provisions prior to submission.

30. The Ørsted IPs have stated that they "*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".* The Applicant emphasises that it has continued to engage with both the Ørsted IPs and the Equinor IPs on wake effects matters. The contractual arrangements in place between the parties prevent the Applicant from disclosing further detail as to the nature of those discussions.

The Ørsted IPs' submissions

31. In support of the submission of updated protective provisions, the Ørsted IPs state that an "improved set" of protective provisions is sought by the Ørsted IPs in order to ensure alignment across both the Project and the Dogger Bank South Offshore Wind Farm.

32. No comment is made by the Ørsted IPs on what the Ørsted IPs consider these improvements to be and no attempt is made to explain how these amendments would address the fundamental flaws in this approach that the Applicant has set out in detail in paragraphs 103 to 129 of the Applicant's Submissions on Wake Loss Matters (REP6-120).

33. The Ørsted IPs go on to state that the "*need for these protective provisions remains the same as set out by the Ørsted IPs throughout the examination of the Outer Dowsing Project*". As explained above, the Applicant has demonstrated that protective provisions are not necessary in light of the conclusions of the Applicant's assessment and the evidence before the SoS. The Ørsted IPs have made no meaningful attempt to respond to the substantive points made by the Applicant, merely asserting that the updated protective provisions "*provide necessary and proportionate protection of the Ørsted IPs assets*", without elaborating further on why the Ørsted IPs consider this to be the case. In adopting this approach, the Ørsted IPs implicitly concede that they have no substantive answer to the Applicant's case and offer the SoS no rational basis on which to reject that case.
34. The Ørsted IPs conclude their submission by stating 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)*."
35. No justification whatsoever has been provided for this position. The Applicant notes that the Mona Decision resulted in the imposition of a DCO requirement (Requirement 29). Where the SoS has considered it necessary to address the matter of wake effects by imposing a restriction on the DCO for the relevant project, which the Applicant maintains is not justified in this case, there are now two examples of wake effects matters being dealt with by Requirement. In each case, the SoS is the determining authority, rather than expert determination, as provided for in the protective provisions.
36. The Ørsted and Equinor IPs' continued insistence on expert determination, against the recent examples of determination by the SoS who is required to act in the public interest, is a *de facto* acknowledgement that the Ørsted and Equinor IPs view this as a private, commercial matter rather than one which engages questions of the public interest and therefore requires the involvement of the SoS (or another public body representing the public interest) as decision-maker. Again, the obvious commercial motivation for the position adopted by the Ørsted IPs and the Equinor IPs was highlighted throughout the Examination, including in the Applicant's Submissions on Wake Loss Matters (REP6-120) at Deadline 6. Neither Interested Party has disputed this point.

The Equinor IPs' submissions

37. The Equinor IPs cite the Mona Decision as endorsing the Equinor IPs position that: "*the issue of wake effects is one which warrants protection within the terms of the DCO, given the position adopted by the Mona Applicant*" and asserts that the consideration of the application for development consent for the Project is analogous to that set out in the Mona and Morgan Decision Letters. The Equinor IPs then state that the established principle of consistency in decision-making would oblige the SoS to adopt a similar approach in determining the application.

38. The Equinor IPs' submission fails to address this issue in any detail or depth and consequently fails to consider numerous critical factors which demonstrate the fallacy of its position. Firstly, there are fundamental differences between the evidence before the SoS in this case compared to the Mona Decision, both in terms of the fact that an assessment has been carried out, and accepted by the relevant Interested Parties, and what that evidence demonstrates in terms of the scale of the impact.

39. In the Mona Decision, the SoS criticised the applicant in that case for failing to engage with the matter of wake effects and declining to provide its own assessment of wake effects arising from the Mona Offshore Wind Farm. The SoS concluded that such an assessment was a requirement of policy 2.8.197 of NPS EN-3.

40. In this regard, a clear distinction can be drawn between the Mona Decision and the Applicant's approach. As set out in section 4 of the Applicant's Submissions on Wake Loss Matters (REP6-120), the Applicant provided its assessment of the likely wake effects arising from the Project in the Wake Loss Technical Note submitted at Deadline 4 of the Examination (REP4-114). This analysis was then supplemented at Deadline 5 by the Wood Thilsted Wake Impact Assessment Report (REP5-152), which was then updated again at Deadline 6 to reflect the inclusion of a "no build zone" for the Dudgeon Extension Project and to include points of clarification following discussion with the Ørsted IPs.

41. The Applicant's approach was positively received by the Ørsted IPs and the Equinor IPs (noting that the Equinor IPs made no substantive comment on this issue until their appearance at Issue Specific Hearing (ISH) 8, a little over 3 weeks prior to the close of Examination). By way of example:

    - At ISH6, the Ørsted IPs noted they were grateful to the Applicant for undertaking this wake loss assessment following the Ørsted IPs' request for it to do so[3];
    - Following receipt of the Wake Loss Technical Note (REP4-114), the Ørsted IPs withdrew their objections in respect of four of the seven projects (Lincs, Westermost Rough, Hornsea 3 and Hornsea 4) which had originally submitted objections relating to wake effects (REP4A-125a);
    - At ISH8, the Ørsted IPs welcomed the submission of the independent assessment of wake impact conducted by Wood Thilsted at Deadline 5 (REP5-152), as it had been conducted by an independent assessor and therefore the Ørsted IPs believe that this is the assessment that should be used to evaluate wake loss in relation to the Project (REP6-126);

[3] Post-hearing submissions including written summaries of oral case put at hearings during w/c 10 February 2025 (REP4a-125)

- On 28 March 2025, both the Equinor IPs and the Ørsted 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 Ørsted IPs and the Equinor IPs as to the methodology used or the quantitative results of the assessment; and
- At Deadline 6, the Equinor IPs re-confirmed that "*the Wake Impact Assessment Report [REP5-152] represents a suitable basis for the assessment of the Project's impacts due to wake effects*".

42. In respect of the scale of the predicted impact, the Wood Thilsted Wake Impact Assessment Report (REP6-108) concluded that the largest anticipated wake effect on any individual project concluded by that assessment is 0.89%, with the average wake effect being approximately 0.5%.
43. The Applicant has set out its detailed reasoning as to why this does not represent a significant effect in EIA terms or in policy terms at section 4 of the Applicant's Submissions on Wake Loss Matters (REP6-120). The Applicant reiterates these submissions, and notes that no contrary evidence has been submitted.
44. By contrast, the Mona Examining Authority (ExA) noted that the scale of potential adverse effect on the Annual Energy Production (AEP) of the Ørsted portfolio could be between 0.01% and 1.38%. The Mona ExA went on to set out that:

"there is a considerable level of uncertainty inherent in these figures. However, even if the effects were at the top end of that range, the ExA is conscious that they would still be lower than the 2% reduction in AEP identified in the case of [Awel y Mor Offshore Wind Farm]."

45. The Mona ExA distinguished the level of effect being experienced from the Mona Offshore Wind Farm from the Awel y Mor decision and concluded that no requirement was necessary. The SoS considered that the figure of 1.58% (being the maximum project-alone impact on any of the Orsted assets in the Irish Sea: Walney Extension 4) was the appropriate figure on which to reach the conclusion that a Requirement was merited and that effects ought to be mitigated. The greatest wake effect predicted to arise from the Project is just over half of that figure (0.89%). No further controls on the Project are required to mitigate *de minimis* wake effects of this nature.
46. Secondly, in the Mona Decision, the SoS considered that the matter of wake effects should be addressed by imposing Requirement 29 of the Mona Offshore Wind Farm Order 2025. The terms of that requirement bear no relation to the terms of the protective provisions that are being sought by the Equinor IPs.
47. Thirdly, the established legal principle of consistency in decision-making does not oblige a decision-maker to make the same decision on all applications of the same type, irrespective of the evidence and the case-specific facts before them. Such an approach would be irrational.
48. The Equinor IPs then make specific points in relation to the Mona Decision. The Applicant deals with each in turn below.

49. The Equinor IPs state that the Applicant's position is that the issue is not engaged by the NPS and that this position has been dismissed by the SoS. As highlighted above, whilst this matter remained unresolved during the Examination, pending the Mona decision, the Applicant consistently approached the wake loss issue on the without prejudice assumption that the SoS may take a different view on the policy interpretation point. In short, the focus of the evidence and debate in the Examination was on the implications in the event the SoS resolved the policy interpretation point as he ultimately did. Hence the Mona Decision on policy interpretation was effectively anticipated and its implications addressed in the Examination.

50. The Equinor IPs state that "[n]*o substantive attempt was made by the Applicant in the formulation of the project to engage with the Equinor IPs to discuss how the impact identified in the assessments submitted might be addressed or mitigated to enable successful co-existence between projects*". The Equinor IPs then go on to state that the SoS's criticisms that the applicant in the Mona Decision "undertook very little meaningful engagement" and that this "has not allowed the issue of mitigation to be satisfactorily considered" equally applies to the Applicant.

51. The Applicant reiterates its submissions at paragraph 38-40 of the Applicant's Submissions on Wake Loss Matters (REP6-120). In short, 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. Furthermore, the Equinor IPs have acknowledged that they do not consider mitigation measures to be capable of addressing the issue (REP5-157). The points made by the Equinor IPs are entirely hollow, opportunistic and lack credibility.

52. The Equinor IPs quote the following extract from the Mona Decision: "*there will be wake effect impacts from the Proposed Development on existing operational offshore infrastructure, noting that precise figures for the impact cannot be established… this will have a financial impact on Ørsted IPs and that this impact may be of some relevance to future decisions in relation to their assets*". The Equinor IPs then state that this reasoning led the SoS to modify the DCO to include requirement 29.

53. The Equinor IPs have (inexplicably) omitted from the quotation the sentence which follows on from the extracted text:

    "*However, the Secretary of State agrees with the ExA that there is insufficient evidence that wake effects will in itself be likely to affect the future viability or safety of any of Ørsted IPs existing infrastructure. The Secretary of State has already noted the urgent need for new offshore wind generation. The Applicant's GHG assessment, even accounting for the Ørsted IPs criticisms, shows that the certain and quantifiable benefits of the proposed development clearly outweigh the indicative and uncertain loses causes* [sic] *to the Ørsted IPs assets by wake effects.*"

54. The Equinor IPs have fundamentally misinterpreted and/or misrepresented the Mona Decision. Having concluded that there was insufficient evidence that the Mona Offshore Wind Farm was likely to affect viability (acknowledging the greater scale of impact in percentage terms than at issue in the current case), it was plainly not the financial impact on the Ørsted IPs in that case that led the SoS to the conclusion that requirement 29 should be imposed. Instead, it was the SoS's conclusion that the applicant's approach had not allowed mitigation to be satisfactorily considered that justified the imposition of the requirement. The SoS had the benefit of similar financial information before him[4] as has been presented by the Ørsted IPs and the Equinor IPs during the Examination. Despite this, the SoS reached his decision on the basis of the percentage effect on wake that was predicted to arise as a result of the project[5], not on the financial implications of such a wake effect.[6] Unless it has been demonstrated that viability it likely to be affected, the financial implications of the predicted wake impacts are purely a private financial matter with no planning implications. As set out above, the percentage wake effect predicted as a result of the Project is markedly different from that predicted as a result of the Mona Offshore Wind Farm.

55. The Equinor IPs then state that the DCO should be modified to provide protection for their assets and that for the reasons set out in paragraphs 44-45 and section 6 of the Equinor IPs' Deadline 6 Submission (REP6-143), they consider it appropriate and preferable to do so through the terms of their proposed protective provisions, rather than by requirement. Neither the quoted paragraphs of the Equinor IPs' Deadline 6 Submission nor the Equinor IPs' Response to RfI 1 (C1-009) provide justification for the imposition of protective provisions rather than a requirement.

56. The Applicant re-emphasises its submissions in paragraph 128 of the Applicant's Submissions on Wake Loss Matters (REP6-120) that a similar suggestion of compensation was rejected in the Ayel y Mor decision as either a requirement or a protective provision. 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 SoS as failing the policy test. That remains the case and there is no basis in law or policy for the protective provisions sought by the Equinor IPs.

The drafting of the wake loss elements of the updated protective provisions

57. The Applicant's detailed comments on the drafting of the protective provisions which were proposed prior to the close of Examination are set out in paragraphs 103 to 129 of the Applicant's Submissions on Wake Loss Matters (REP6-120). These comments largely continue to apply.

58. In addition, the Applicant makes the following further comments.

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4 See post-examination submission C1-007

5 See paragraph 4.82, Mona Decision

6 Which is critical to the Ørsted IPs and the Equinor IPs argument that effects are "significant" (REP6-135 and REP6-143)

59. It is notable that, in updating the proposed protective provisions, the Equinor IPs and the Ørsted IPs have removed the duty on the undertaker to mitigate wake effects (as was previously set out in paragraph 3 of the previous set of protective provisions (see AS-037 and REP6-143)). Whilst the sub-heading "mitigation" is retained, the substance of the provisions requires: a) an updated assessment, taking account of any mitigations that have been or will be implemented to reduce wake loss; and b) a wake loss mitigation scheme which secures mitigations proposed by the undertaker and provides for compensation for financial loss. These provisions do not require the further consideration of mitigation by the undertaker.

60. No reasons are provided by the Ørsted IPs or the Equinor IPs for this change in position but it is unsurprising in circumstances where the Equinor IPs have acknowledged that they consider mitigation will not address the issue (REP5-157) and the evidence demonstrates that no mitigation is likely to be available. That is a highly significant matter for the SoS to consider when forming a judgment on whether any provision to address potential wake loss should be imposed in this case. Nevertheless, the absence of any proposed duty to mitigate in the updated protective provisions remove any connection between the reason for imposing Requirement 29 of the Mona Offshore Wind Farm Order 2025 (i.e. to explore opportunities for mitigation) and the positions of the Ørsted IPs and the Equinor IPs.

61. The protective provisions do not allow for any balancing exercise that must be carried out in the public interest and in accordance with the policies set out in the NPSs. In particular, paragraph 2.8.2 of NPS EN-1 provides that "*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*". The protective provisions would apply irrespective of the implications for the Project, its contribution to renewable energy targets and the wider public interest in the rapid deployment of urgently needed Critical National Priority infrastructure. Thus, the proposed protective provisions seek to place the commercial interests of the Ørsted IPs and the Equinor IPs above the vital public interest in ensuring the rapid delivery of the public benefits flowing from the proposed development. That is unconscionable.

62. No justification is provided by either the Ørsted IPs or the Equinor IPs as to the timing restrictions being sought, i.e. that the independent expert must be appointed and the wake loss assessment undertaken at least *a year prior to first installation* of a wind turbine generator and that the wake loss mitigation scheme must be agreed *six months prior to first installation* of a wind turbine generator. There can be no proper public interest justification for the imposition of these timescales where these are purportedly to address impacts that only occur on operation. The only possible motivation for advancing such a suggestion is to provide the Ørsted IPs and the Equinor IPs with a commercial benefit by enabling them to delay the delivery of a commercial rival's wind farm. That is directly contrary to the established public interest in the rapid deployment of such development once it has been approved and is, again, unconscionable.

63. The concept of the provision of security for payment of financial compensation has been introduced as a new proposal, without engagement with the Applicant, one month prior to the original statutory determination date and without any justification or explanation for its inclusion or why the Ørsted or Equinor IPs consider it to be necessary. The imposition of protective provisions containing an obligation to provide financial security would: a) be contrary to the emerging policy which clarifies that the inclusion of the underlying payment provisions would fail the test of necessity; b) serve no identified public interest benefit; and c) be wholly unreasonable, particularly in circumstances where the evidence demonstrates that the wake effect in question is neither material in policy terms nor significant in EIA terms.
64. The proposed protective provisions set out in the Ørsted IPs' Response to RfI 1 (C1-003) at paragraph 4(4) provide for a carve out for the need to provide financial compensation where the impact is reduced to "zero". This is inconsistent with the Ørsted IPs' approach during the Examination where objections on the grounds of wake effects were withdrawn by various entities because the impacts were so small as to be inconsequential, but were not zero. Requiring financial compensation for all impacts regardless of scale, including those of a *de minimis* nature, is patently unreasonable. It is also directly contrary to the emerging policy in the draft updated NPS EN-3 (paragraph 2.8.233) which emphasises that "*there is no expectation that wake effects can be wholly removed between developments"*.
65. The deficiencies identified with the previous protective provisions remain in the updated set. The Applicant therefore maintains that the protective provisions continue to fail all six of the tests set out in paragraph 4.1.16 of NPS EN-1.

3 DCO Requirement

Whether or not a DCO requirement should be imposed

66. There are now two previous instances where a requirement has been imposed on a DCO to address the matter of wake effects: Requirement 25 of the Awel y Mor Offshore Wind Fam Order 2023 and Requirement 29 of the Mona Offshore Wind Farm Order 2025.
67. The Applicant has previously explained the fundamental flaws with Requirement 25 of the Awel y Mor Offshore Wind Farm Order 2023 (the **AyM Requirement**) (REP2-051 and paragraphs 105-110 of REP6-120). That requirement fails all six of the policy tests set out in paragraph 4.1.16 of NPS EN-1. Those submissions are maintained and reiterated without repetition here.
68. In the Mona Decision, the SoS concluded it was appropriate to impose Requirement 29 on the Mona Offshore Wind Farm Order 2025. On the evidence before the SoS in this case, it is neither necessary nor reasonable to impose such a requirement on a DCO for the Project.
69. In its Recommendation Report the Mona ExA concluded, notwithstanding the identified non-compliance with the relevant policy, that "*it does not consider that the imposition of a requirement in the style of the AyM Order would be an appropriate remedy in this case*".
70. In reaching that conclusion, the Mona ExA reasoned that Awel y Mor was not directly analogous with Mona. In differentiating the two projects, the Mona ExA explained:
    - the Rhyl Flats Offshore Wind Farm was located appreciably closer to AyM (just over 5km) than any of the Orsted assets in the Mona case;
    - the wake effects, on a worst case basis would be appreciably lower from Mona than the 2% effect identified from AyM;
    - the alleged effects of Mona related to six different operational wind farms, all at different distances and points of the compass from Mona, which makes for a more complex wake effects picture; and
    - the Mona ExA had concluded that there was no effect on viability in the context of the policy and this was also relevant to the question of whether a requirement was appropriate.
71. On the evidence presented during and after the Examination in this case, all of these considerations apply equally to the determination of the Application.
72. Following the close of the examination on the Mona Offshore Wind Farm, the applicant in that case was invited to submit a without prejudice proposal on methods to secure: "*a. the provision of an assessment (if the assessment contained in the Wood Thilsted Report is not agreed); and b. further consideration of means to minimise any assessed impacts, including opportunities to work with impacted windfarms to achieve this.*"
73. In response to that request, the applicant in that case provided the draft requirement which would ultimately become Requirement 29, which is in the following terms:

"Wake effects

29.—(1) No part of any wind turbine generator may be erected as part of the authorised development until either—

(a) A wake effects plan has been submitted to and approved by the Secretary of State; or

(b) The undertaker has provided evidence to the Secretary of State that alternative mitigation for wake effects has been agreed with the existing Ørsted offshore wind farms.

(2) The wake effects plan provided in accordance with paragraph (1)(a) must include details of reasonable steps that have been taken by the undertaker to minimise wake effects on the existing Ørsted offshore wind farms whilst maximising the capacity of the authorised development within the identified technical, environmental and other constraints of the authorised development.

(3) Where paragraph (1)(a) applies the design plan submitted to the licencing authority under condition 17(1)(a) of schedule 14 of this Order must be in accordance with any approved wake effects plan.

(4) For the purposes of this requirement— "existing Ørsted offshore wind farms" means Barrow offshore wind farm, Burbo Bank extension, Walney Extension, West of Duddon Sands, Walney offshore wind farm or Burbo bank."

74. In response to that without prejudice proposal, Ørsted stated that they did not consider that this draft requirement addressed the issue (C2-007).

75. The Mona Decision letter does not provide any specific analysis of whether or not Requirement 29 meets each of the six policy tests set out in paragraph 4.1.16 of NPS EN-1 on the evidence in that case. It therefore offers little positive guidance as a precedent. The Applicant submits that the imposition of a Requirement akin to Requirement 29 in this case would fail these tests, having regard to the specific circumstances and in particular the evidence before the SoS in this case.

76. The Applicant notes that under limb (1)(a) and (2), the wake effects plan must include details of the reasonable steps that have been taken by the developer to minimise wake effects whilst maximising capacity, within the other constraints of the site. Limb (1)(b) of Requirement 29 allows the developer to agree "alternative mitigation" for wake effects with the relevant third parties.

77. The Applicant submits that either route requires there to be appropriate mitigation available. The Requirement specifically refers to "mitigation" and not "compensation". These terms are not interchangeable and have different meanings in the context of both environmental assessments and the NPSs. The specific reference to "mitigation" and not "compensation" is also consistent with the terms of emerging draft policy at paragraph 2.8.233 of the NPS EN-3. Financial compensation is a matter that falls outside of the planning process.

78. The evidence before the SoS in both the Mona case and for the Project indicates that there is no mitigation likely to be available that would address the issue. The Applicant notes that the Mona ExA stated at paragraph 5.3.79 of their Recommendation Report that "*No measure has been suggested that would avoid any potential wake effects entirely*." Despite concluding that a requirement should be imposed on the Mona Offshore Wind Farm Order 2025, the SoS also noted at paragraph 4.86 of the Mona Decision that "*there may not be a simple solution which would not significantly compromise the generating capacity of the Proposed Development or other secured mitigation*" and concluded at paragraph 4.83 that *"the certain and quantifiable benefits of the proposed development clearly outweigh the indicative and uncertain loses causes* [sic] *to the Ørsted IPs assets by wake effects".*

79. Similarly, neither the Ørsted IPs nor the Equinor IPs have suggested that there are or are likely to be any mitigation measures (as opposed to financial compensation) that would be effective in this case either to avoid or materially to reduce potential wake effects without significantly reducing the generating capacity of the proposed development. Indeed, the Equinor IPs stated, at paragraphs 21 and 32 of the Equinor IPs' Deadline 5 Submission (REP5-157), that they do not consider mitigation measures to be capable of addressing the issue. That stance is reflected in the fact that the updated protective provisions proposed by the Ørsted IPs and the Equinor IPs do not even require the Applicant to explore opportunities for mitigation, from which it can be read that either the Ørsted IPs and the Equinor IPs do not consider that any effective mitigation is likely to be available, and/or that mitigation is not their ultimate objective, but financial compensation.

80. In the Mona Decision, the SoS explained at the end of paragraph 4.86 that (emphasis added): "*the Secretary of State considers that the* ***Applicant's approach has not allowed the issue of mitigation*** *to be* ***satisfactorily considered***". I.e. it was the absence of consideration of any mitigation measures that was considered to justify the requirement, not the existence of any evidence of mitigation being available that would be likely to make a material difference to the extent of wake loss. The Applicant has set out elsewhere in this submission the differences in the approach taken to this issue between it and the applicant in the Mona Offshore Wind Farm. In this case, the availability of mitigation has been satisfactorily considered and the conclusion reached that no mitigation measures are available that would be likely to make any material difference without disproportionately reducing the generating capacity of the proposed development.

81. In order to be able to attach weight to mitigation for the purposes of decision-making, the mitigation measure in question must be clearly articulated, sufficiently precise and there must be a reasonable certainty in its delivery. These tests are not met based on the evidence before the SoS.

82. Limb (1)(b) clearly fails all six of the policy tests set out in paragraph 4.1.16 of NPS EN-1:

    a. Necessary - the wake assessments before the SoS demonstrate that the wake effects are neither significant in EIA terms nor material in policy terms and no evidence has been submitted that is capable of demonstrating that the Project would affect the future viability of another offshore wind farm. The requirement therefore fails the test

of necessity. Furthermore, the lack of necessity also stems from the ambiguity of the requirement and the lack of any clarity as to the nature of "alternative mitigation" in this context, what such "alternative" mitigation is intended to achieve, and why it is necessary to achieve it to make the proposed development acceptable in planning terms (see further below).

b. Precise - The meaning of "alternative mitigation" is entirely unclear and therefore fails the test of precision. The Mona Decision Letter does not shed any light on this issue, and it is not something addressed in the report and recommendations of the ExA in that case. It may be that the use of the term "alternative" in this context is intended to distinguish the subject matter of limb (b) from the mitigation that is the subject matter of limb (a), namely "*reasonable steps … to minimise wake effects on the existing … wind farms whilst maximising the capacity of the authorised development* [etc.]". If so, that would only serve to exacerbate rather than resolve the lack of precision. If the "alternative mitigation" is not mitigation of the type contemplated under limb (a), it is entirely unclear what type of mitigation limb (b) is contemplating, what planning purpose it is intended to serve, why it is thought to be necessary, and why its achievement is considered to obviate the need to meet the requirements of limb (a).

c. Relevant to planning –If "alternative mitigation" is in fact intended to refer to the payment of compensation, it would not be relevant to planning and limb (b) could not rationally be imposed. It is not clear how the SoS could properly conclude that the payment of an undisclosed sum of money by one commercial operator to another (which could be sufficient to satisfy limb (b)) would obviate the need to examine the "*reasonable steps … to minimise wake effects"* subject to the SoS's decision-making as required under limb (a). It would not be appropriate for the SoS to derogate from this public law function by providing that two private parties can simply agree that this requirement no longer needs to be discharged, with no information available in the public domain as to how this conclusion has been reached and no ability for the SoS to interrogate the evidence that has been provided in support of the discharge of the requirement. The reference to "alternative mitigation" has no connection to planning and the taking of physical steps to reduce wake effects. If it did, the provision would simply duplicate the provisions of limb (a) (albeit without the public interest safeguards) and therefore fail the test of necessity.

d. Relevant to the development – The imposition of a requirement which could be discharged on the basis of the payment of an undisclosed sum that need have no connection to the impacts of the Project and which is subject to no public scrutiny cannot be said to be relevant to the development.

e. Enforceable – If the concept of "alternative mitigation" means some unspecified type of mitigation rather than financial compensation then all that limb (b) requires is that the parties confirm to the SoS that the "alternative mitigation" is agreed. There is no provision for the SoS to ensure that the mitigation is appropriate, effective or even implemented. Nor is there any opportunity for the SoS to assess whether the mitigation secured is in the public interest (for example by maximising the overall energy yield across the different developments).

f. Reasonable in all other respects – having failed each of the above tests, the imposition of a requirement including limb (b) cannot be said to be reasonable.

Without prejudice requirement

83. For the reasons summarised above, it is plain that no further restrictions on the DCO are justified in light of the evidence before the SoS. The Applicant highlights that there are key differentiating factors between the decision before the SoS in relation to the Project and both the decision of the SoS in relation to the development consent order for the Awel y Mor Offshore Wind Farm and the Mona Decision.

84. As explained at paragraphs 66 to 82 above and in previous submissions[7], in the current case, a requirement in either the Awel y Mor or the Mona forms would fail to meet the policy tests for a requirement.

85. Without prejudice to those submissions, and for the sake of completeness, the Applicant has drafted a requirement which is intended to address the deficiencies with the Mona Requirement in terms of precision, relevance to planning, relevance to the development and enforceability. It should be stressed, however, that any such requirement could only properly be imposed by the SoS in the event that he concluded on the evidence in this case that it was also necessary and reasonable in all other respects, notwithstanding the Applicant's submissions on those two issues.

Wake effects

[33].—(1) No operation of any wind turbine generator forming part of the authorised development may begin until a wake effects plan has been submitted to and approved by the Secretary of State.

(2) The wake effects plan provided in accordance with paragraph (1) must include details of reasonable steps that have been taken by the undertaker to minimise wake effects on the existing and proposed third party offshore wind farms whilst maximising the capacity of the authorised development within the identified technical, environmental and other constraints of the authorised development.

(3) The design plan submitted to the MMO under condition 13(1)(a), part 2 of schedule 10 of this Order must be in accordance with any approved wake effects plan.

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[7] See in relation to the Awel y Mor form of requirement, the Applicant's Responses to The ExA's First Written Questions (ExQ1) (REP2-051) and the Applicant's Submissions on Wake Loss Matters (REP6-120)

(4) For the purposes of this requirement— "existing and proposed third party offshore wind farms" means: Race Bank offshore wind farm, Dudgeon Offshore Wind Farm, Hornsea 1 offshore wind farm, Hornsea 2 offshore wind farm, Sheringham Shoal offshore wind farm, Dudgeon Extension offshore wind farm and Sheringham Shoal Extension offshore wind farm.