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Ørsted IPs' – Response to RfI

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**"). It is noted that the Ørsted IPs that continue to hold objections to the Outer Dowsing Offshore Wind Project (the "**Outer Dowsing Project**") in relation to wake loss are Hornsea 1 Limited, the Hornsea 2 Companies and Race Bank Wind Farm Limited.

This submission comprises the Ørsted IPs' response to the Request for Information issued by the Secretary of State on 17 November 2025 (the "**RfI**"). The RfI invites all Interested Parties to comment on the information provided in response to previous RfIs issued by the Secretary of State since the close of the examination of the Outer Dowsing Project. The Ørsted IPs consider that there are two documents submitted by the Applicant to which they have not yet responded and which warrant a response from the Ørsted IPs – these are the Applicant's Response to the All Parties Consultation **[C3-026]** and the Applicant's Response to the Second Request for Information – Wake Effects **[C3-028]** (the "**Applicant's Wake Effects Document**").

The Ørsted IPs consider that the majority of points made by the Applicant in the Applicant's Response to the All Parties Consultation **[C3-026]** and the Applicant's Wake Effects Document have already been responded to by the Ørsted IPs in various submissions, most notably as summarised in the Ørsted IPs' Closing Submissions **[REP6-135]** and in the Ørsted IPs' most recent submissions (**[C1-003]** and **[C2-009]**). The Ørsted IPs do not propose to repeat, at length, their submissions and position on these matters in this submission. However, the Ørsted IPs consider it necessary to respond to specific matters arising from the Applicant's recent submissions which are material to the Secretary of State's determination. The Ørsted IPs address these matters below on a document-by-document basis.

The Ørsted IPs maintain at the outset of this submission (for the reasons set out in the examination of the Outer Dowsing Project, particularly as summarised in the Ørsted IPs' Closing Submissions **[REP6-135]** and in the Ørsted IPs' most recent submissions (**[C1-003]** and **[C2-009]**)) that the protective provisions for the benefit of the Ørsted IPs (as updated in Appendix 1 of **[C1-003])** should be included on the face of the Development Consent Order ("**DCO**") for the Outer Dowsing Project in order to afford the relevant Ørsted IPs necessary and proportionate protection. The proposed provisions represent a fair, proportionate and policy-compliant mechanism (particularly in relation to the paragraphs of the National Policy Statement for Renewable Energy Infrastructure ("**NPS EN-3**") that are referenced in the Ørsted IPs' Closing Submissions **[REP6-135]**) to protect existing infrastructure, maintain investor and lender confidence and uphold the integrity of the UK's offshore-wind framework. As explained later in this submission, this conclusion also applies in respect of the finalised text for the new NPS EN-3 that will shortly come into force, although the Ørsted IPs note that the Outer Dowsing Project is to be determined in accordance with the existing NPS EN-3 (though the new version can potentially be taken into consideration).

Applicant's Response to the All Parties Consultation [C3-026]

The Ørsted IPs note that the pertinent pages of this document (pages 24-26) largely refer to the Applicant's Wake Effects Document, which the Ørsted IPs address later in this submission.

However, the Ørsted IPs note the Applicant's reiteration of its position that the "*Secretary of State can be satisfied that the assets of Lincs Wind Farm Limited and Race Bank Wind Farm Limited are sufficiently protected such that any effects on third party infrastructure are negated or reduced to a level sufficient to enable the Secretary of State to grant consent in accordance with paragraph*

2.8.348 of NPS EN-3, if engaged. No further information ought to be required in relation to this matter".

The Ørsted IPs disagree with this assessment. As set out on pages 1-2 of **[C1-003]** and page 2 of **[C2-009]**, the protective provisions provided by the Applicant in relation to Lincs Wind Farm Limited and Race Bank Wind Farm Limited relate only to proximity control areas and do not address the quantification or mitigation of wake-related financial loss. The Ørsted IPs have explained throughout the examination of the Outer Dowsing Project that the fuller set of protective provisions (as updated in Appendix 1 of **[C1-003]**) 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, both for the Ørsted IPs that hold objections relating to proximity (Lincs Wind Farm Limited and Race Bank Wind Farm Limited) and for those that hold objections relating to wake loss (Hornsea 1 Limited, the Hornsea 2 Companies and Race Bank Wind Farm Limited). Full details of the Ørsted IPs' reasoning can be found in **[C1-003]** and **[C2-009]**, which includes reference back to submissions made during the examination of the Outer Dowsing Project as appropriate.

Applicant's Wake Effects Document

As stated above, the Ørsted IPs consider that the majority of points made by the Applicant in the Applicant's Wake Effects Document have already been responded to by the Ørsted IPs in various submissions, most notably as summarised in the Ørsted IPs' Closing Submissions **[REP6-135]** and in the Ørsted IPs' most recent submissions (**[C1-003]** and **[C2-009]**). The Ørsted IPs' position as set out in those submissions remains accurate for the purposes of this submission, and therefore the Ørsted IPs do not propose to repeat, at length, their submissions and position on these matters. However, the Ørsted IPs have identified certain points made in the Applicant's Wake Effects Document that require a response and have responded to these on a topic-by-topic basis below.

Engagement

Paragraph 20 of the Applicant's Wake Effects Document makes several assertions about the Ørsted IPs' engagement with arguments made by the Applicant, including an alleged lack of response to the Applicant's submissions on the application of policy tests regarding, for example, financial viability. Similarly, paragraph 21 goes on to say that 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*". Paragraph 33 also takes a similar approach, suggesting that the "*Ørsted IPs have made no meaningful attempt to respond to the substantive points made by the Applicant*" relating to protective provisions (see below).

The Ørsted IPs firmly disagree with the contents of these paragraphs. The Ørsted IPs' position on these matters has been consistently made clear during, and subsequent to, the examination of the Outer Dowsing Project, most notably as summarised in the Ørsted IPs' Closing Submissions **[REP6-135]** and in the Ørsted IPs' most recent submissions (**[C1-003]** and **[C2-009]**). The Ørsted IPs have, both throughout the examination and after it, taken what they consider to be the most helpful approach to making submissions, i.e. signposting to where their position has previously been set out in detail, rather than unnecessarily repeating lengthy text on numerous occasions. Any inference from the Applicant that a lack of response (be that in relation to protective provisions, or any other matter) constitutes a telling omission is entirely without basis.

For example, on the matter of financial viability, one only has to consider pages 2-3 of the Ørsted IPs' Closing Submissions **[REP6-135]** in which the Ørsted IPs set out the financial significance, both from a policy perspective and in terms of real-world effect, of the impact of the Outer Dowsing Project on the Ørsted IPs' assets (as shown in the Ørsted IPs' Updated Financial Analysis in Appendix 1 of the Ørsted IPs' Submission between Deadlines 5 and 6 **[AS-037]**). The fact that this position was not repeated by the Ørsted IPs since that submission does not mean that its position has changed in relation to this matter, nor does it signify any acceptance of the contents of the Applicant's more recent submissions.

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Policy Application and Assessment

In paragraph 2 of the Executive Summary of the Applicant's Wake Effects Document, the Applicant states that it 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 Project] on third party offshore wind farms*". This position is reiterated in paragraphs 9(a) and 16(a) of the same document. As set out on pages 1-6 of the Ørsted IPs' Closing Submissions **[REP6-135]**, the Ørsted IPs do not agree with the Applicant's conclusion in respect of the initial question of policy application, for the reasons set out in that document.

Paragraph 3 of the Executive Summary of the Applicant's Wake Effects Document then goes on to state 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*". This position is reiterated in paragraph 9(b), and in paragraph 16(b) of the same document the Applicant goes on to say that "*the assessment […] demonstrates that the impacts of the Project are de minimis*". As set out on pages 2-3 of the Ørsted IPs' Closing Submissions **[REP6-135]**, the Ørsted IPs do not agree with the Applicant's conclusion in respect of the significance of the impact on the Ørsted IPs' assets – as shown in the Ørsted IPs' Updated Financial Analysis in Appendix 1 of the Ørsted IPs' Submission between Deadlines 5 and 6 **[AS-037]**, the revenue impact is undeniably large (as the figures demonstrate) – it cannot be the case that estimated financial losses of £199m are deemed insignificant in EIA terms or "*de minimis*" (a phrase which the Applicant asserts without any established definition); they remain material even when discounted to present value using conservative assumptions. Further, the Applicant has adopted a contradictory position in this regard – it states in its Wake Effects Document that "*the wake effects of [the Outer Dowsing] Project are very small*" but also paradoxically states in its Written Summary of Issue Specific Hearing 8 **[REP6-113]** that the related compensatory sums for these impacts are "*very large*". This only serves to assist the argument put forward by the Ørsted IPs that the adverse effects on their assets are significant.

Further, and again as stated in the Ørsted IPs' Closing Submissions **[REP6-135]**, the Annual Energy Production ("**AEP**") impact on the Ørsted IPs' assets is likely to impact the decisions around timing of decommissioning for these assets (i.e. bringing decommissioning forward). Returning to the arguments in relation to engagement in the section above, this is an element of the Ørsted IPs' submissions that the Applicant has not engaged with.

Throughout the examination, and subsequently (as stated in the paragraph above), the Applicant has defined the modelled wake effects introduced by the Outer Dowsing Project as "*very small*". By extension, the Ørsted IPs presume that the Applicant must also deem the concomitant percentage impacts on generation and overall revenue to also be "*very small*", which feeds into its arguments regarding future viability. However, and as suggested by the Applicant in a contradictory manner at paragraphs 92 and 93 of its Submissions on Wake Loss Matters at Deadline 6 **[REP6-120]**, the effect on future viability in fact hinges upon the percentage impact upon operating margins, an entirely separate matter. While the Applicant has described the modelled wake effect, and the concomitant revenue losses put forward by the Ørsted IPs in their Updated Financial Impact Assessment (in Appendix 1 of **[AS-037]**), as "*very small*", the losses (even if less than 1% AEP) will unarguably manifest as far greater percentage losses of operating margins; losses that will, by any estimation, bear no resemblance to the 'less than 1% AEP' figure highlighted and relied upon by the Applicant to date.

It is not accurate to state, as the Applicant has done, that the Ørsted IPs have failed 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*" – the Ørsted IPs have clearly explained the rationale for their position on this matter throughout and since the examination, and would be happy to engage with the Applicant (using the currently-available information) to develop a realistic range of figures for these losses of operating margins, if the Secretary of State deemed such an exercise to be helpful. The stance adopted by the Applicant throughout the examination, and since, demonstrates the Applicant's misconceived view that this significant downgrade of

operating margins must be borne entirely by the Ørsted IPs, and not in any way by the business case of the Outer Dowsing Project. It is telling that the Applicant has failed to provide a quantitative assessment of the likely impact of mitigation (including compensation) upon the business case of the Outer Dowsing Project, or to recognise the UK-wide benefit that will be secured by mitigation and/or compensation outcomes preventing the earlier-than-otherwise decommissioning of existing offshore wind farms.

In relation to paragraph 2.8.347 of NPS EN-3, the Applicant's position is that the "*future viability*" of the Ørsted IPs' assets is not "*likely*" to be affected by the Outer Dowsing Project. As set out in the Ørsted IPs' Closing Submissions **[REP6-135]**, most notably on page 3, the Ørsted IPs disagree with this position. Paragraph 2.8.347 of NPS EN-3 should not be interpreted as requiring the Ørsted IPs' assets to be rendered completely and immediately unviable as a result of the Outer Dowsing Project (as that would place the evidence bar at an unreasonably high level), nor should it be interpreted as requiring that the future viability of these assets *will* be affected. The test is whether such future viability is *likely* to be affected in a significant manner. As the Ørsted IPs have repeatedly set out, the future viability of their assets is likely to be affected by the Outer Dowsing Project.

The Applicant's position seems to be that owners of waked projects must demonstrate that their viability will be immediately 'affected' as soon as the wake effects from the Outer Dowsing Project first manifest (if 'affected' is taken to mean that the waked projects are likely to become immediately unviable at that point). This does not stand to reason – paragraph 2.8.347 of NPS EN-3 cannot only be engaged if it is deemed that the wake effects from the Outer Dowsing Project are likely to immediately be the sole factor that makes the Ørsted IPs' assets economically unviable. It is a material consideration, instead, that these wake effects contribute towards significantly shortening the lifetime of the Ørsted IPs' assets – i.e. the losses in relation to operating margins referred to above is, as the Ørsted IPs have made clear, likely to bring forward the point of decommissioning. The Ørsted IPs also note that they have, in conjunction with Scira Offshore Energy Limited, Dudgeon Offshore Wind Limited, Scira Extension Limited and Dudgeon Extension Limited (together, the "**Equinor IPs**"), obtained a legal opinion from Richard Turney KC (the "**Legal Opinion**") in relation to this matter, which is included as Appendix 1 of this submission. The Secretary of State is invited to consider the contents of the Legal Opinion in full, and references to its conclusions are made in the subsequent sections of this submission, but in relation to viability the Ørsted IPs draw attention to the statement in the Legal Opinion that "*if it is accepted, as the Equinor and Ørsted IPs suggest, that there will be an impact on the economic viability of the seven wind farms towards the end of their operational life such that they may be decommissioned early, **then it seems clear that this is an effect on future viability***" (**emphasis added**).

The Applicant also asserts, in paragraphs 38-45 of its Wake Effects Document, that "*a clear distinction can be drawn between the Mona Decision and the Applicant's approach*" to an assessment of wake loss impacts. The Applicant suggests that because it provided its assessment of the likely wake effects arising from the Outer Dowsing Project into the examination, which (once this was updated to be an independent assessment conducted by Wood Thilsted) was accepted by the Ørsted IPs as that which should be used to evaluate wake loss, the figures provided (being lower than the "*2% reduction*" quoted in the Examining Authority's Recommendation Report for the Mona DCO) mean that no further controls on the Outer Dowsing Project are required. This entire argument is rebutted by the recent decision on the Morecambe DCO, in which the Secretary of State protected all eight of the Ørsted West Coast IPs with a requirement despite wake impacts that ranged between 0.32% and 1.37% for the impacted assets. Precedent has therefore clearly been set, via the Morecambe DCO, that wake impacts causing levels of AEP reduction predicted for the Ørsted IPs' assets as a result of the Outer Dowsing Project can, and should, be subject to controls in the corresponding DCO.

Protective Provisions and NPS EN-3

At the outset of this section, the Ørsted IPs wish to note that they have received no engagement from the Applicant on the wording of the proposed protective provisions. Therefore, to the extent

that there are provisions of particular concern to the Applicant which could have been considered and reviewed by the Ørsted IPs during such negotiations, this has not been possible due to the Applicant's stance. Should the Applicant be willing to meaningfully discuss the wording of the protective provisions, the Ørsted IPs would be happy to do so.

Justification and Compensation

In paragraph 5 of the Executive Summary of the Applicant's Wake Effects Document, the Applicant states that "*the protective provisions sought by the Ørsted IPs and the Equinor IPs are entirely inappropriate, having no basis in law, policy or precedent*". This position is reiterated in paragraphs 9(d), 16(c) and 22-24 of the same document, particularly in relation to the basis for compensation in the protective provisions. Further, paragraph 33 goes on to state that "*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*".

The Ørsted IPs have set out their position in relation to this matter in the paragraphs below, but refer in particular to the following conclusions of the Legal Opinion:

- that NPS EN-3 should not be read as precluding mitigation of economic loss through compensation "*since that would make an assumption that those losses were irrelevant for planning purposes (which they may not be); and would make an assumption that compensation for losses is not part of the framing of the DCO (which it invariably is)*";

- that "*there is a clear case for expressly addressing compensation for wake loss in the DCO*";

- that regardless of the threshold of impacting viability discussed above, "*whilst the future viability of the seven wind farms is a material consideration as a result of the terms of the EN-3, it seems to me that the same analysis could in principle apply to wake losses which do not reach that threshold of impacting viability. It is unclear why wake loss should be treated differently from any other effect in this context in that the Applicant and the Secretary of State should consider how such adverse impacts can be avoided or mitigated, and ultimately compensated for as necessary*";

- that it is "*entirely clear that a protective provision secured by a DCO may require the payment of compensation or provide for an indemnity*";

- that there are advantages of protective provisions over requirements in a DCO, including that they "*can be enforced directly between the parties, without the need for enforcement action in respect of a breach of requirements by an enforcing authority*";

- that "*the desire (in the draft NPS) for such matters to be resolved between developers is better achieved by protective provisions, rather than through a requirement which will necessarily have to be determined and enforced by the enforcing authority*";

- that it is not considered "*that the absence of precedent for the use of protective provisions is a determinative, or even important, factor in deciding whether or not they should be imposed here. The facts are very specific. The issue of wake loss is under active consideration in a number of ongoing cases. There has not been any decision of the Secretary of State to date which has rejected the use of protective provisions, and which would therefore have to be distinguished*"; and

- that there "*are circumstances where provision on the face of the DCO is appropriate to avoid either lengthy disputes, or worse still uncompensated interferences with the economic interests of others*".

It is plainly clear, therefore, that the Applicant's assertion in paragraph 5 of the Executive Summary of its Wake Effects Document that "*the protective provisions sought by the Ørsted IPs and the Equinor IPs are entirely inappropriate, having no basis in law, policy or precedent*" is entirely false. This is confirmed in the final paragraph of the Legal Opinion.

The protective provisions proposed by the Ørsted IPs provide a robust and controllable framework, enabling both the undertaker and the Ørsted IPs to manage the process directly, either by entering into a Wake Loss Agreement[1] or, alternatively, by agreeing to, or jointly appointing independent experts to determine, a Wake Loss Mitigation Scheme. This reflects established industry practice, whereby assessments and agreements, including those based on in-depth technical and commercial considerations, are managed between the owners of offshore infrastructure and their experts rather than deferred to the Secretary of State.

As set out throughout the examination of the Outer Dowsing Project, particularly as summarised at pages 1-6 of the Ørsted IPs' Closing Submissions **[REP6-135]**, the protective provisions submitted by the Ørsted IPs are compliant with the existing NPS EN-3. The Ørsted IPs do not consider that this conclusion is changed by the wording of the new NPS EN-3 that will shortly come into force (though, as set out above, this new policy document is only a potential consideration in the determination of the Outer Dowsing Project, which remains subject to the existing NPS EN-3). The new NPS EN-3 requires, at paragraph 2.8.176, that "*applicants should consider the impact of their proposal on other activities and make reasonable endeavours to address these*". Further, paragraph 2.8.232 requires that "*applicants should demonstrate that they have made reasonable endeavours to mitigate the impact of wake effects on other offshore wind generating stations*". This mitigation can be secured via protective provisions, with independent third-party experts determining the accuracy, or 'reasonableness', of the post-mitigation Wake Loss Assessment and of any Wake Loss Mitigation Scheme that may be required.

In addition, in the face of any argument relating to new paragraph 2.8.233, which states that "*there is no expectation that wake effects can be wholly removed between developments*", the Ørsted IPs note that the protective provisions proposed do not purport to "*wholly remove*" wake effects; rather, they allow for appropriate mitigation of the physical wake effects referred to in 2.8.233, and/or for compensation to address wake effects (i.e. not solely requiring financial compensation – it is inaccurate for the Applicant to state, as it has done in paragraph 22 of its Wake Effects Document, that the protective provisions "*require a financial compensation payment to be made*"). New paragraph 2.8.229 also states that "*in some circumstances, the Secretary of State may wish to consider the potential to use requirements involving arbitration as a means of resolving how adverse impacts on other commercial activities will be addressed*"[2]. The protective provisions proposed by the Ørsted IPs align favourably with this policy, as they provide for the appointment and use of jointly-appointed independent third-party experts and, should those mechanisms fail, they provide a direct reference to any differences being determined by arbitration. This is preferable to the appeal mechanism set out in the DCO for the Outer Dowsing Project; which, presumably and based on recent precedent in granted offshore wind DCOs, any wake loss requirement inserted into the DCO would be subject to. That mechanism requires the undertaker to submit an appeal (should they wish to) if the requirement is not determined (or approval of the relevant document required to discharge the requirement is refused) which would be decided by a Planning Inspector who may not have the specialism required for such determination. This could lead to a lengthy, complex and expensive process that is avoided by including the protective provisions in the DCO instead.

Whilst the government's response document to the consultation responses for the new NPS states that "*the planning system is not expected to adjudicate on compensation arrangements for wake effects*", it is clearly the case that DCO requirements imposed in recently-made offshore wind DCOs (such as Requirement 29 of the Mona Offshore Wind Farm Order 2025 ("**Mona DCO**") and Requirement 13 of the Morecambe Offshore Windfarm Generation Assets Order 2025

[1] The terms 'Wake Loss Agreement', 'Wake Loss Mitigation Scheme' and 'Wake Loss Assessment' are used in this submission – these terms have the same meaning as defined in the protective provisions submitted by the Ørsted IPs in **[C1-003]**.
[2] This reflects the policy in paragraph 2.8.260 of the existing NPS EN-3.

("**Morecambe DCO**")) do effectively leave the planning system (and, more specifically, the Secretary of State in his discharge of wake requirements) as the adjudicator on mitigation arrangements overall. Paragraph 1(a) in each of the requirements in the Mona DCO and Morecambe DCO provides for mitigation through wake minimisation steps, whereas paragraph 1(b) provides for (but does not necessitate) mitigation through compensation. The Secretary of State is not required to adjudicate on the specific content of any compensation arrangements that may be agreed pursuant to paragraph 1(b); however, the undertaker must evidence the existence of any such agreement if discharge is to be secured, either in whole or in part, pursuant to that agreement.

Decision-making in relation to the Outer Dowsing Project at this stage must be in accordance with the existing NPS EN-3 wording, which (as the Ørsted IPs' have set out throughout the examination of the Outer Dowsing Project) does not preclude the Ørsted IPs from being compensated for the wake effects of the Outer Dowsing Project on their assets. The Ørsted IPs maintain that establishing a precedent of securing wake compensation through protective provisions is the responsible course of action for the Secretary of State to take as a solution to wake loss impacts, as it will ensure significant system-wide benefits.

Further, the fact that protective provisions have not been included by the Secretary of State in the Mona DCO nor the Morecambe DCO (with a requirement instead being included in those DCOs as a solution to wake effects) should not be taken to set a precedent whereby protective provisions are not an appropriate solution to wake effects. In the examinations of the Mona DCO and the Morecambe DCO, the Ørsted West Coast IPs[3] did not submit protective provisions (as the facts and circumstances were different to those of the Outer Dowsing Project) and therefore the Secretary of State was not required to consider these as a potential solution in those DCOs.

The Ørsted IPs firmly deny that they have implicitly conceded on any points raised by the Applicant regarding protective provisions or NPS EN-3. The Ørsted IPs' position on these matters has been consistently made clear during, and subsequent to, the examination of the Outer Dowsing Project, most notably as summarised in the Ørsted IPs' Closing Submissions **[REP6-135]** and in the Ørsted IPs' most recent submissions (**[C1-003]** and **[C2-009]**). The Ørsted IPs have, both throughout the examination and after it, taken what they consider to be the most helpful approach to making submissions, i.e. signposting to where their position has previously been set out in detail, rather than unnecessarily repeating lengthy text on numerous occasions.

The Ørsted IPs are of the view that the protective provisions submitted in Appendix 1 of **[C1-003]** are the most appropriate solution for addressing wake loss impacts and that they 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. The protective provisions provide a clear, more predictable and administratively efficient means of securing a reasonable mitigation outcome. Given that the protective provisions guarantee the delivery of a fair agreement within a timebound framework, there is no possibility of problematic obstruction of, or delay to, either the continuing maturation or the construction of the Outer Dowsing Project, assuming that the undertaker commences the process set out in the protective provisions in a timely fashion, as required by paragraphs 4(1) and 4(2). The protective provisions also do not, in any way, necessitate payment of compensation before wake impacts occur, as mistakenly suggested by the Applicant in paragraph 62 of its Wake Effects Document.

Submission of Updated Protective Provisions

Paragraph 25 of the Applicant's Wake Effects Document criticises the Ørsted IPs' justification for updating the protective provisions submitted in relation to the Outer Dowsing Project (at Appendix 1 of **[C1-003]**). Further paragraph 32 goes on to state that "*no comment is made by the Ørsted IPs on what the Ørsted IPs consider these improvements to be and no attempt is made to*

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

explain how these amendments would address the fundamental flaws in this approach that the Applicant has set out in detail".

The Ørsted IPs consider it to be an improved approach in that the protective provisions sought in relation to the Outer Dowsing Project are aligned with those sought in relation to the Dogger Bank South Offshore Wind Farm Project (the "**DBS Project**"). The topic of wake loss is, currently, subject to ongoing development and change. Therefore, the fact that the examination of the DBS Project took place at a later date to that of the Outer Dowsing Project inevitably meant that further consideration was given to the form of protective provisions by the Ørsted IPs as time progressed. In order to ensure alignment across both projects, the Ørsted IPs took **[C1-003]** as an opportunity to provide the updated (and improved) set of protective provisions for the Outer Dowsing Project, such that the Secretary of State is able to have one set in front of him for consideration across both projects.

One of the main improvements of the updated set of protective provisions was to facilitate a more flexible approach for dealing with any compensation arrangements arising from the wake effects on the Ørsted IPs' assets. The updated set of protective provisions ensures that the parties collaborate and agree an optimal and preferred mechanism for quantifying financial loss (including financial loss per annum) and the payment mechanism and timescales for mitigating such financial loss, rather than only requiring an up-front lump sum payment.

Justification supporting the seeking of protective provisions, is provided in the corresponding section above.

Mechanism and Drafting

Paragraph 27 of the Applicant's Wake Effects Document criticises the mechanism of the protective provisions and states that 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*". It also states that the "*procedure to be followed under the draft protective provisions would be in the sole control of the Ørsted IPs*".

The Ørsted IPs strongly disagree with the categorisation of the procedure for the mechanism set out in the protective provisions portrayed by the Applicant. As set out above, the protective provisions provide for the appointment and use of jointly-appointed independent third party experts (which, per the drafting of the protective provisions, must be agreed "*without unreasonable delay*" in the event that they are required). Should those mechanisms fail, the protective provisions provide a direct reference to any differences being determined by arbitration under the terms of the DCO drafted by the Applicant. It is entirely false to suggest, as the Applicant has done, that the mechanism is "*in the sole control of the Ørsted IPs*". As set out above, provided the undertaker commences the process set out in the protective provisions in a timely fashion, as required by paragraphs 4(1) and 4(2), there can be no possibility of problematic obstruction of, or delay to, either the continuing maturation or the construction of the Outer Dowsing Project.

Paragraph 61 of the Applicant's Wake Effects Document states that "*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*". Similarly, in relation to the timescales proposed in the protective provisions, paragraph 62 states that 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*".

Again, the Ørsted IPs strongly disagree with the entirely unsupported categorisation of priorities arising from the protective provisions in these paragraphs of the Applicant's Wake Effects Document. In no way do the proposed protective provisions place the interests of the Ørsted IPs above the public benefits that will flow from the Outer Dowsing Project (if consented and delivered). Rather, the sole purpose of the protective provisions is to ensure that the wake effects that will be imposed by the Outer Dowsing Project are fairly and reasonably mitigated (the

Applicant's own modelling has provided a preliminary quantification of these wake impacts, and the resulting and undisputed multi-million pound revenue loss is evidenced through the Ørsted IPs' Updated Financial Analysis submitted in Appendix 1 of **[AS-037]**). The principles of the proposed protective provisions are closely aligned with the many well-established sets of protective provisions that routinely feature within offshore wind farm DCOs, and that also feature within the Applicant's draft DCO for the protection of Network Rail Infrastructure Limited. These protective provisions ensure the mitigation of impacts that are imposed upon the operations and commercial interests of a range of impacted businesses both on- and offshore.

The "*no less than*" timeframes set out in paragraphs 4(1) and 4(2) of the proposed protective provisions, coupled with the dispute resolution provisions set out in paragraph 10, ensure the timely appointment of independent experts and, where necessary, the timely activation of arbitration. The express intention of these provisions is to ensure that the Ørsted IPs are at no point in a position to impose a problematic delay upon the delivery of the Outer Dowsing Project. The Applicant's assertion that the Ørsted IPs can impose a delay and derive a commercial benefit from doing so is false. The Applicant's subsequent assertion that the Ørsted IPs' position is motivated by a non-existent commercial benefit is disingenuous and entirely false. The Ørsted IPs' have sought to strike an optimal balance by putting forward 12- and 6-month timeframes (in paragraphs 4(1) and 4(2) respectively) that are deemed to be neither too far in advance (for sufficient information to be available) nor too late (such as to cause delay). As has been the case throughout and since the examination, the Ørsted IPs continue to encourage and welcome engagement from the Applicant on the form of the proposed protective provisions. The Ørsted IPs are entirely comfortable with the Applicant proposing pre-installation timeframes for paragraphs 4(1) and 4(2) that more optimally meet their needs.

The Ørsted IPs are of the view that the protective provisions offer a balanced and proportionate mechanism for compliance with national policy, ensuring fairness, and importantly clarity, between operational generators and new entrants while reducing the administrative burden on the Secretary of State. By guaranteeing mitigation through these provisions, the Secretary of State would protect existing offshore wind assets as well as newly leased projects, including the Outer Dowsing Project, from future wake losses that will arise as The Crown Estate progresses the future offshore wind leasing rounds that are required to secure Net Zero through the installation of approximately 100 GW of offshore wind capacity across UK waters by 2050.

<u>Requirement</u>

In paragraphs 6 and 7 of the Executive Summary of the Applicant's Wake Effects Document, and then as set out in paragraphs 83-85, the Applicant has noted that it has submitted a form of drafting for a DCO requirement on a without prejudice basis.

The Ørsted IPs agree with the Applicant that a DCO requirement is not the preferred approach for addressing wake-related disputes; instead, for the reasons set out above and in previous submissions, the Ørsted IPs submit that protective provisions are the necessary, fair, proportionate and policy-compliant solution. However, without prejudice to the Ørsted IPs' position in this regard, the Ørsted IPs are taking this opportunity to comment on the Applicant's drafting for a DCO requirement as set out below. These suggestions are provided in the order that the relevant wording appears in the requirement, and the full requirement showing the amendments proposed by the Ørsted IPs is included at Appendix 2 of this submission.

The Ørsted IPs note that the majority of their proposed changes to the Applicant's drafting for a DCO requirement reflect the wording agreed between the Ørsted West Coast IPs and the undertaker for the Morecambe DCO, which has been included by the Secretary of State in Requirement 13 of Schedule 2 of the granted Morecambe DCO. The Ørsted IPs consider that, although the requirement in the Morecambe DCO creates unnecessary uncertainty in comparison with the Ørsted IPs' proposed protective provisions, it does represent a more balanced approach to the issues and procedure addressed, in comparison with the requirement wording proposed on a without prejudice basis by the Applicant.

Paragraph (1)

(1) No operation of any wind turbine generator forming part of the authorised development may begin until either:

> *(a) a wake effects plan has been submitted to and approved by the Secretary of State following consultation with each of the owners of the existing and proposed third party offshore wind farms; or*
>
> *(b) The undertaker has provided evidence to the Secretary of State that alternative mitigation for wake effects has been agreed with each of the owners of the existing and proposed third party offshore wind farms; or*
>
> *(c) A combination of (1)(a) and (1)(b) is provided to and agreed by the Secretary of State to ensure that the wake effects of the authorised project on each of the existing and proposed third party offshore wind farms are mitigated.*

The Ørsted IPs amendments to sub-paragraph (a) ensure that, as is common practice in such requirements, they are provided with sufficient opportunity to be consulted on the wake effects plan and have their views presented to the Secretary of State for his consideration. The Ørsted IPs consider this to be a fair and reasonable suggestion, given the technical nature of this topic and the fact that the Outer Dowsing Project will negatively impact their assets. This reflects the approach agreed between the Ørsted West Coast IPs and the undertaker for the Morecambe DCO (in the requirement that has subsequently been included by the Secretary of State in the made Morecambe DCO).

The Ørsted IPs have proposed a new sub-paragraph (b) to allow the undertaker and the Ørsted IPs to collaborate and agree alternative mitigation for wake effects, such that a wake effects plan is no longer necessary. The Ørsted IPs consider this necessary as it encourages the parties to commence and continue productive engagement with one another to resolve outstanding issues and in the event that the parties are able to reach such agreement, the requirement can therefore be discharged without the need for a wake effects plan. This reflects the approach agreed between the Ørsted West Coast IPs and the undertaker for the Morecambe DCO (in the requirement that has subsequently been included by the Secretary of State in the made Morecambe DCO), and the Ørsted IPs note that this also has precedence in Requirement 29 of the Mona DCO – indeed, it was this paragraph 1(b) that was relied upon by the Applicant for the Mona DCO and the Ørsted West Coast IPs that led to the Ørsted West Coast IPs withdrawing their objections to the Mona DCO. This recent, real-world example shows that the Applicant's assertion in its Wake Effects Document that this limb is unworkable in practice and non-compliant with policy is false.

The Ørsted IPs have also proposed a new sub-paragraph (c) which provides the undertaker with the option of submitting and agreeing a hybrid approach with the Secretary of State, to maximise the available flexibility of discharging this requirement in practice whilst ensuring that the Ørsted IPs' assets are sufficiently protected.

Paragraph (2)

(2) Any~~The~~ wake effects plan provided in accordance with paragraphs (1)(a) or 1(c) must include:

> *(a) a wake effects assessment showing the modelling used to calculate the wake effect of the proposed final design on the annual energy production of the existing and proposed third party offshore wind farms;*
>
> *(b) details of ~~reasonable~~ steps that have been taken in the final design of the authorised development or measures which will be applied during the operation of the authorised development (or a combination of both) ~~by the undertaker~~ to minimise wake effects on*

the existing and proposed third party offshore wind farms ~~whilst maximising~~ without materially reducing the capacity of the authorised development ~~within the identified technical, environmental and other constraints of the authorised development~~;

(c) the timescales for implementation of any wake effect mitigation measures;

(d) any time limits for wake effect mitigation measures;

(e) details of any necessary monitoring of the wake effect mitigation measures; and

(f) details of consultation with each of the owners of the existing and proposed third party offshore wind farms and the extent of any agreement or disagreement with them regarding:

(i) whether any design changes or operational measures could further reduce the wake effect impacts; and

(ii) the conclusions of the wake effects assessment under paragraph (1)(a).

The Ørsted IPs have elaborated on what the wake effects plan under the requirement must include, in order to provide sufficient clarity to all parties.

The insertion of new sub-paragraph (a) clarifies that the wake effects plan must include a wake effects assessment, backed up by underlying modelling, to ensure that the conclusions of such assessment can be reviewed and interrogated, as appropriate, by the waked projects. This ensures that there can be no doubt as to the modelling and figures used in relation to the wake effect calculation for the Ørsted IPs' assets.

As currently drafted, the Ørsted IPs have several concerns with what is now limb (b) of paragraph 2 of the requirement. Firstly, the reference to the undertaker maximising capacity, while also taking meaningful steps to minimise wake effects, removes flexibility from the Applicant in designing the Outer Dowsing Project in a considerate way to mitigate wake impacts on neighbouring offshore wind farms. It should be investigated, in the wake effects plan, whether designs for the Outer Dowsing Project exist (with minor changes to capacity or turbine assumptions) which result in a reduction to the wake impacts on neighbouring offshore wind farms. Including the now-removed wording (shown as 'struck-through') in the requirement above which would prevent this, as it would require the Applicant to maximise capacity, is not helpful to address the issue of wake impacts. This renders paragraph 1(a) of the requirement (to which paragraph 2(b) relates) less likely to provide the Ørsted IPs with any substantive comfort that their assets are protected.

The Ørsted IPs have therefore suggested, per the amendments above, that the wording of limb (b) of paragraph 2 of the requirement instead reads "*without materially reducing the capacity of the authorised development*". This reflects the approach and wording agreed between the Ørsted West Coast IPs and the undertaker for the Morecambe DCO (in the requirement that has subsequently been included by the Secretary of State in the made Morecambe DCO).

Further, the Ørsted IPs have stated in the drafting that the steps to minimise wake effects are those taken "*in the final design of the authorised development or measures which will be applied during the operation of the authorised development (or a combination of both)*", in order to provide additional clarity on what is required to be shown in the wake effects plan under this limb. This also reflects the approach and wording agreed between the Ørsted West Coast IPs and the undertaker for the Morecambe DCO (in the requirement that has subsequently been included by the Secretary of State in the made Morecambe DCO).

The Ørsted IPs have also proposed the deletion of the word "*reasonable*" in relation to steps to be taken by the undertaker. Including "*reasonable*" as a qualifier for steps to be taken opens up

a line of argument whereby the undertaker could view any reduction in the Outer Dowsing Project's capacity as unreasonable, instead of proposing a considerate design which takes into account wake impacts on neighbouring offshore wind farms. In this scenario, the undertaker could feasibly not take any steps and the Ørsted IPs' assets would, in effect, end up entirely unprotected.

The Ørsted IPs have also suggested deleting the wording "*within the identified technical, environmental and other constraints of the authorised development*". This is because it is not clear how the Secretary of State can ascertain the "*technical, environmental and other constraints*" of the authorised development and how capacity is impacted in this context. The undertaker is the only party able to ascertain the precise constraints and capacity of the Outer Dowsing Project and, as such, it would be challenging for the Secretary of State to evaluate any constraints presented by the undertaker when discharging this requirement. The framing of the requirement allows the undertaker to present its subjective view on constraints as absolute. Taking technical constraints as an example (which all developers would take a different view on), the undertaker could present a view on constraints relating to the placement of foundations, which may be primarily based on commercial interests. The undertaker's position could be that mitigation is not possible because of that constraint, and there would be no ability for the Secretary of State to determine whether that position was reasonable. The amendments proposed by the Ørsted IPs align with the approach and wording agreed between the Ørsted West Coast IPs and the undertaker for the Morecambe DCO (in the requirement that has subsequently been included by the Secretary of State in the made Morecambe DCO).

The Ørsted IPs have proposed new sub-paragraphs (c)-(e) to provide sufficient clarity to all parties. This aligns with the wording included in paragraphs 3(c)-(e) of the draft requirement proposed at paragraph 30 of the Secretary of State's Request for Information dated 6 November 2025 in relation to the DBS Project.

The Ørsted IPs have proposed a new sub-paragraph (f), which reflects the approach and wording agreed between the Ørsted West Coast IPs and the undertaker for the Morecambe DCO (in the requirement that has subsequently been included by the Secretary of State in the made Morecambe DCO), to ensure that the impacted offshore wind farms are given the opportunity to review and comment on the wake effects assessment at an appropriate time in the process to allow comments to be taken into account by the undertaker prior to submission of the wake effects plan to the Secretary of State for approval. This also ensures that when the Secretary of State receives the wake effects plan for approval, the Secretary of State can clearly see the extent of agreement or disagreement between the undertaker and the owners of the relevant impacted offshore wind farms. The wake effects assessment is a technical document, meaning it is important for this to be reviewed by technical specialists and for the Secretary of State to be aware of any concerns of a technical nature. The proposed amendments therefore ensure that the Secretary of State has the best possible information available to him for the purposes of discharging the requirement.

Paragraph (3)

(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.

The Ørsted IPs have no comments on this paragraph of the requirement.

Paragraph (4)

(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.

The Ørsted IPs have no comments on this paragraph of the requirement.

New paragraph (5)

The Ørsted IPs propose a new paragraph (5) to the requirement as follows, which implements standard requirement wording to ensure that the wake effects plan must be implemented by the undertaker as approved.

(5) Each approved wake effects plan submitted under this requirement must be implemented as approved.

In the absence of the amendments to the requirement wording proposed above by the Ørsted IPs, the Secretary of State would be required to assess the Applicant's unilateral assessment of wake impacts and mitigation, without any structured mechanism to test, consult upon, or secure mitigation outcomes. This would be inconsistent with the approach adopted by the Secretary of State in recent offshore wind decisions, including the Mona and Morecambe DCOs, and would not provide a robust basis for compliance with NPS EN-3.

Conclusion

In this submission, the Ørsted IPs have rebutted the points made by the Applicant in the Applicant's Response to the All Parties Consultation **[C3-026]** and the Applicant's Wake Effects Document (notwithstanding that the majority of points made by the Applicant in these documents have already been responded to by the Ørsted IPs in various submissions, most notably as summarised in the Ørsted IPs' Closing Submissions **[REP6-135]** and in the Ørsted IPs' most recent submissions (**[C1-003]** and **[C2-009]**), so the Ørsted IPs have not repeated their submissions and position on these matters).

In doing so, the Ørsted IPs have reiterated that the protective provisions submitted by the Ørsted IPs in **[C1-003]** represent a solution to inter-project wake loss impacts that is fair, proportionate, and policy-compliant. The protective provisions provide a robust process which facilitates the agreement of mitigation and/or compensation for the significant impacts of the Outer Dowsing Project on the Ørsted IPs' assets, including provision for the timebound appointment of independent third party experts (and an arbitrator if required). As set out above, the Legal Opinion at Appendix 1 of this submission provides clear justification for this position – in particular, the Legal Opinion expressly states that:

> "*I disagree with the Applicant's overarching assertion that the proposed protective provisions have "no basis in law, policy or precedent". The legal basis for securing compensation under a DCO is clear, being expressly one of the matters that can be provided for. As a matter of policy, EN-3 makes clear that economic impacts which affect future viability of other projects must be considered in deciding whether to grant development consent, and on what terms. In relation to precedent, there is precedent for securing compensation measures under protective provisions, and for addressing wake effects on the face of a DCO. There is no decision where a case for protective provisions in terms such as those now sought has been rejected.*"

The Ørsted IPs note that the inclusion of the form of protective provisions submitted by the Ørsted IPs in **[C1-003]** in the DCO for the Outer Dowsing Project would permit the Ørsted IPs to withdraw their objection from the Outer Dowsing Project. The Ørsted IPs also note that they are fully aligned with the Equinor IPs on the need for protective provisions to be included in the DCO.

Without prejudice to the Ørsted IPs' position in this regard, the Ørsted IPs have also taken the opportunity to comment on the Applicant's drafting for a DCO requirement provided in the Applicant's Wake Effects Document, in case the Secretary of State is minded to include such a requirement in the DCO. The majority of the Ørsted IPs' proposed changes to the Applicant's drafting for a DCO requirement reflect the wording agreed between the Ørsted West Coast IPs and the undertaker for the Morecambe DCO, which has been included by the Secretary of State in Requirement 13 of Schedule 2 of the granted Morecambe DCO. The Ørsted IPs consider that, although the requirement in the Morecambe DCO creates unnecessary uncertainty in comparison

with the Ørsted IPs' proposed protective provisions, it does represent a more balanced approach to the issues and procedure addressed, in comparison with the requirement wording proposed on a without prejudice basis by the Applicant. The Secretary of State is not constrained to adopt a single mechanism for addressing wake effects – where protective provisions provide greater certainty, enforceability and administrative efficiency than a requirement in a DCO, as the Ørsted IPs submit is the case for the Outer Dowsing Project, it is both lawful and appropriate for such protective provisions to be included on the face of the DCO.

The UK is now entering a period of spatial compression in its offshore wind zones; establishing a precedent that fails to provide predictable mitigation would materially undermine future leasing and Contract for Difference bidding clarity. The Legal Opinion also considers the wider points made in previous submissions by the Ørsted IPs in this context, namely "*in the context of investment in offshore wind, and the relationship with ongoing leasing of new locations for wind farms*" – the Legal Opinion confirms, as the Ørsted IPs have consistently maintained, that "*the points raised are plainly material to the Secretary of State's determination of the [Outer Dowsing Project] application. The absence of clear basis upon which wake losses will be addressed inevitably creates uncertainty both for the [Outer Dowsing Project], and for others*".

Pinsent Masons

APPENDIX 1

KC OPINION

OUTER DOWSING OFFSHORE WINDFARM

WAKE LOSS

OPINION

1. I am asked to advise Scira Offshore Energy Limited, Dudgeon Offshore Wind Limited, Scira Extension Limited, and Dudgeon Extension Limited (together the "Equinor IPs"), and Hornsea 1 Limited, the collective of Breesea Limited, Soundmark Wind Limited, Sonningmay Limited and Optimus Wind Limited (together, the "Hornsea 2 Companies") and Race Bank Wind Farm Limited (together the "Ørsted IPs") in respect of an application for development consent for Outer Dowsing Offshore Wind Farm ("ODOW"). The ODOW application is made by GT R4 Limited (trading as Outer Dowsing Offshore Wind) ("the Applicant").

2. I am asked to advise in respect of issues relating to wake effects from the proposed ODOW on windfarms owned and operated by the Equinor and Ørsted IPs. The Equinor and Ørsted IPs are together statutory undertakers for seven offshore windfarms. Five of those windfarms are operational (Sheringham Shoal, Dudgeon, Race Bank, Hornsea One and Hornsea Two) and two of them are expected to be in operation by 2030 (Sheringham Shoal Extension and Dudgeon Extension).

Factual background

3. The Applicant applied for development consent for ODOW and the examination closed in April 2025. During the course of the examination the Applicant undertook a wake loss assessment in relation to the impact of ODOW on the seven offshore windfarms as well as other projects ("the Wood Thilsted Report"). Although there were some points of contention arising from the Wood Thilsted Report, by the close of the examination the Equinor and Ørsted IPs were content to treat it as the basis for defining impacts on their offshore windfarms.

4. The predicted impacts were in each case a reduction in energy yield of less than 1%. However, the economic losses involved would be very substantial. The Equinor IPs put forward an economic loss of between £42m and £164m, and the Ørsted IPs suggested they would suffer a financial impact of between £55m and

£199m. Both sets of IPs explained that these impacts would have a potential or likely effect on future viability of the seven windfarms. The Equinor IP's Position Statement in April 2025 said:

> "75. The Applicant submitted at Issue Specific Hearing 8 (ISH8) that the Equinor IPs have not provided sufficient evidence to demonstrate that the bar in policy test NPS EN-3 para 2.8.347 of 'likely to affect the future viability' has been met.
>
> 76. The Equinor IPs submitted a Financial Impact Assessment (FIA) (our document reference C282-EQ-Z-GA-00035) into the Examination on 27 March 2025 which was accepted at the discretion of the Examining Authority. The FIA aimed to provide a quantification for the range of the likely economic loss to be suffered by the Equinor IPs assets and projects. As set out in Section 4 above, the Equinor IPs consider the impacts to be significant. (An updated FIA has been included at Appendix 1).
>
> 77. At ISH8 the Equinor IPs explained that such loss presents a material risk to the future viability of the projects (see Written Summary of Equinor IPs' Oral Submissions at Issue Specific Hearing (ISH) 8, submitted at Deadline 6). Sections 5.1 and 5.2 below set out further evidence that demonstrates the effect on future viability for SHS, DOW, SEP and DEP.
>
> 78. This evidence, coupled with the policy justification set out in Section 3.2, together demonstrate that the NPS EN-3 para 2.8.347 test has been met i.e. the proposed development is likely to affect the future viability."

5. Similarly, the Ørsted IPs' Closing Statement explained:

> "*Likely to Affect Future Viability*
>
> Turning to the second limb, the Applicant's position is that the "future viability" of the Ørsted IPs' assets is not "likely" to be affected by the Outer Dowsing Project. Indeed, during ISH8, the Applicant asserted that paragraph 2.8.347 of NPS EN-3 should be considered as a binary test of whether the wake effect of the Outer Dowsing Project would be likely to render the Ørsted IPs' assets to be rendered completely and immediately unviable or not. The Ørsted IPs disagree with this position.
>
> Paragraph 2.8.347 of NPS EN-3 should not be interpreted as requiring the Ørsted IPs' assets to be rendered completely and immediately unviable as a result of the Outer Dowsing Project (as that would place the evidence bar at an unreasonably high level), nor should it be interpreted as requiring that the future viability of these assets will be affected. The test is whether such future viability is likely to be affected in a significant manner (as addressed above), and if this is demonstrated

then the Ørsted IPs assets must be worthy of protection (and such effects must be afforded substantial weight in the decision-making process in accordance with paragraph 2.8.347 of NPS EN-3).

The Ørsted IPs submit that the future viability of their assets is likely to be affected by the Outer Dowsing Project. The AEP impact is likely to impact the decisions around timing of decommissioning for these assets (i.e. bringing decommissioning forward). Whilst this impact may not necessarily result in the termination of the Ørsted IPs' projects immediately upon suffering the wake effects, permitting this impact to remain unmitigated and/or uncompensated would set a precedent in favour of premature decommissioning of such assets across UK waters (given that any new projects would also be subject to the same likelihood of premature decommissioning as future offshore wind farm projects are subsequently consented and installed). Given that government policy supports an increase in installed offshore wind capacity from the current level of 15 gigawatts to approximately 100 gigawatts by 2050, the magnitude of inter-wind farm wake effects will inevitably increase as this planned build-out is realised – this makes any such precedent-setting particularly dangerous, as it effectively incentivises new projects to significantly impact the most valuable (from a sustainability perspective aspect of existing projects (i.e. the operational tail-end)."

6. Both the Equinor and Ørsted IPs contended for protective provisions which would secure the payment of compensation for these losses. In respect of the scope for protective provisions, the Equinor IPs' position statement explained:

"32. EN-3 is almost unique amongst national policy statements in making economic loss suffered by third parties an important and relevant matter in the determination of applications. It only does this in relation to offshore wind, and only in so far as impacts relate to shipping and navigation, and to other offshore infrastructure and activities. Parliament, in designating the NPS in these terms, considered offshore wind and its potential to impact upon other offshore infrastructure and activities as somewhat of a special case.

33. As a result, it does not assist the Applicant to refer to the absence of precedent in other DCO examinations to third parties being compensated for economic loss, but in any event those submissions are also incorrect. The Equinor IPs refer to the following examples:

i. whilst the issue of economic loss arising from the reduction in wind resource caused by one project on another is relatively novel, the principle of an offshore industry being compensated for economic loss arising as a result of an offshore wind farm proposal through the provisions of a DCO is not. The Applicant, the Examining Authority and the Secretary of State will be aware that it is

commonplace for the fishing industry to be compensated for economic loss arising from the construction of offshore wind farms through the application of the FLOWW guidelines. Indeed, the Applicant has provided such a mechanism through its Outline Fisheries Liaison and Co-Existence Plan [PD-061] (section 4.4), the provisions of which are secured through the deemed marine licences.

ii. By way of a further example, the Equinor IPs also refer to the recently made The Associated British Ports (Immingham Green Energy Terminal) Order 2025. Schedule 14 Part 5 contains protective provisions in favour of Network Rail. These include, at paragraph 72, an obligation to reimburse train operating companies for any loss of revenue suffered by them as a consequence of the works."

7. In its submissions in response to the second and third consultations by the Secretary of State, the Ørsted IPs made broader points about the case for protective provisions including compensation:

> "The Ørsted IPs also wish to note the significant challenges and inefficiencies that will be introduced if an appropriate solution to wake loss impacts is not found. It cannot be the case that new developers are permitted to impose uncompensated wake losses on existing assets (that are already operational and are currently benefitting the UK) without adequate mitigation and/or compensation, as this risks undermining investor confidence and system-wide efficiency within the UK's offshore wind portfolio, alongside being contrary to the government's renewable energy policies and targets in relation to offshore wind. This would set a precedent of failing to deter new projects from significantly impacting the most valuable (from a sustainability perspective) aspect of existing projects (i.e. the operational tail-end). The protective provisions proposed by the Ørsted IPs prevent the setting of this dangerous precedent.
>
> Wake effects are an inevitable feature impacting both existing and planned offshore wind farms across the majority of the UK's Exclusive Economic Zone ("EEZ") (as well as across other EEZs where available sea-space is limited). In order to appropriately minimise UK wake loss impacts at the system-wide level, the wake loss impacts that will be created through new leasing rounds should be properly weighted (amongst the many other siting constraints), both by The Crown Estate (when prospective lease areas are selected) and by prospective lessees (as they value and seek to secure the varying lease sites on offer). Notwithstanding these efforts to minimise system-wide wake impacts through the efficient siting of new offshore wind farms, residual wake impacts will inevitably need to be managed. This can be achieved in two ways in a DCO – protective provisions or a requirement. As set out above and in previous submissions, the Ørsted IPs consider that protective provisions are the more appropriate solution. When developers compete for newly offered lease areas, they quantify the wake effects that will be imposed upon each lease area by

surrounding offshore wind farms; this is one of several factors that determines the overall attractiveness, or value, of the lease sites on offer. However, in order to support the efficient development of the UK's EEZ, a precedent is required (through the DCO process) that will ensure that developers factor-in the full wake effect associated with a given lease area, i.e. both: (1) the wake effect that will be imposed upon that new project; and (2) the wake effect that will be imposed by that new project.

A number of existing offshore wind farm projects (established through earlier lease rounds pre-dating Lease Round 4) will be impacted as a result of the wakes introduced by Lease Round 4 projects (including the Outer Dowsing Project). The Ørsted IPs are of the view that full mitigation for the wake effect introduced by the Outer Dowsing Project, and by other Lease Round 4 projects, should be properly secured by including the protective provisions proposed in the Ørsted IPs' most recent submission (Appendix 1 of [C1-003]) within the DCO. Full mitigation for Lease Round 4 offshore wind farm projects, against the wake impacts introduced by future projects that will be leased through future leasing rounds, can likewise be secured by including similar protective provisions in future DCOs, and/or by The Crown Estate including appropriate clauses within future Agreements for Lease."

8. The Applicant has argued throughout against the proposed protective provisions. In its most recent relevant submissions (made to the Secretary of State in response to consultation) it stated:

"*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. "

9. The Applicant went on to set out a rebuttal of the position adopted by the Equinor and Ørsted IPs in their written submissions, and to resist the suggestion of the imposition of a requirement to address wake loss matters.

10. The Secretary of State has now invited comments in respect of the Applicant's submissions.

Previous decision-making in DCOs relating to wake loss

11. Those instructing me refer to four decided DCO applications:

    a. Awel y Mor Offshore Wind Farm, where a requirement was included in the DCO;

    b. Mona Offshore Wind Farm, where a requirement was included in the DCO and it has been reported that an agreement has been reached between the relevant applicant and the affected parties;

    c. Morgan Offshore Wind Farm, where it has been reported that an agreement has been reached between the relevant applicant and the affected parties and a requirement was not imposed because that agreement was reached prior to the DCO decision; and

d. Morecambe Offshore Wind Farm, where the relevant applicant engaged with the affected parties and submitted an agreed form of requirement to the Secretary of State's consultation. This was included in the relevant DCO.

12. In the Awel y Mor decision, the Secretary of State gave the matter of wake loss "moderate" adverse weight in the planning balance. The requirement imposed there was:

> "**Wake effects**
>
> 25.—(1) No part of any wind turbine generator shall be erected as part of the authorised development until an assessment of any wake effects and subsequent design provisions to mitigate any such identified effects as far as possible has been submitted to and approved in writing by the Secretary of State, in order to mitigate the impact of the authorised development on the energy generation of Rhyl Flats Wind Farm. The assessment must be based on the scope of this Order as granted.
>
> (2) The authorised development shall be carried out in accordance with the approved details."

13. I note that wake loss is an issue in other DCOs. In respect of the Dogger Bank South Offshore Windfarm, I have previously advised the statutory undertakers in respect of the Dogger Bank A, B and C offshore windfarms in respect of wake loss matters, and my advice has been submitted to the Secretary of State[1] and made available directly to the Equinor and Ørsted IPs.

Policy

14. NPS EN-3 (2024) does not expressly address wake loss but provides:

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

[1] It has also been published on the project website: EN010125-002562-C1-022 - Projco IPs - 6 December 2025(716256553.1).pdf

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…

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.

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."

15. The draft revisions to EN-3 would include express provision in respect of wake effects. In particular, it is proposed to include the following wording (paragraph 2.8.233):

> "Disputes around compensation for wake effects are regarded to be a commercial matter to be managed between disputing developers. The planning system will not adjudicate on matters of compensation for wake loss."

Instructions

16. I am asked to consider:

a. The principles of consistent decision making in terms of the substantive issue and how that should be interpreted by the Secretary of State on the ODOW project in light of other recent decisions and further whether the inclusion of a requirement on previous DCOs precludes the ability of the Secretary of State to incorporate protective provisions in this case;

b. The interpretation of the current NPS (which ODOW must be determined in accordance with) and the draft NPS (which is a material consideration for ODOW) in respect of the imposition of measures to secure compensation through protective provisions to the DCO for ODOW. In particular, my comments are sought on:

i. the requirement for compensation if the Secretary of State adopts the Equinor IPs' and Ørsted IPs' position that ODOW is likely to affect the future viability of the seven windfarms such that the policy test in Para 2.8.347 is engaged; and

ii. alternatively, if the Secretary of State accepts the position of the Applicant that the impacts do not reach the threshold of "affecting the future viability" of any project, then notwithstanding that significant weight shall not then be applied to such impacts whether it is still appropriate for compensation to be secured applying the usual principles of the mitigation hierarchy; and

iii. paragraph 2.8.233 of the draft EN-3 and whether this precludes mitigation of economic loss through compensation on the face of the DCO.

c. Whether the protective provisions can be included in the DCO for ODOW to address the impacts of wake loss on the seven windfarms, including the lawfulness of this approach and addressing questions of precedent;

d. If protective provisions can be included in the DCO for ODOW, whether this is justified in the circumstances of ODOW;

e. Whether the issue would be better addressed by protective provisions as opposed to a requirement; and

f. Whether I agree with the analysis in the Ørsted IPs submissions in response to the earlier consultations.

Analysis

Consistency

17. It is a well-established principle of planning law that like cases should be decided in a like manner. Consistency does not, however, require the same decision to be made. Rather, if it is proposed to take a different approach it is necessary to have regard to the principle of consistency and to explain why it is proposed to take a different approach. The principle was first explained by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P&CR 137, and

has been reaffirmed on multiple occasions since: see e.g. the Court of Appeal in *DLA Delivery Ltd v Baroness Cumberlege of Newick* [2018] PTSR 2063.

18. In the case of wake loss, it seems to me that there is a strong case for the Secretary of State taking a consistent approach to cases decided under the same policy framework when this issue arises. This includes the weight to be given to a particular issue. To the extent that different approaches are taken, the Secretary of State should nonetheless (a) consider the principle of consistency and (b) explain why an earlier decision has not been followed. On the facts here, a consistent approach would appear to lead to incorporating provisions in the DCO to address the issue. There does not seem to be any reason to not deal with the issue here, when it has been addressed elsewhere.

Interpretation of policy

19. The critical question here is the extent to which the NPS either requires or permits the consideration of compensation for wake loss. In my opinion, on a proper construction of the policy, the NPS indicates that compensation may be required, but does not require it in all cases. I reach that view for the following short reasons:

    a. In demonstrating compliance with the NPS, the mitigation hierarchy should be applied (2.1.4).

    b. The applicant is expected to minimise negative impacts on other projects (2.8.344), which may include negative economic impacts from wake loss.

    c. The Secretary of State should be satisfied that the site selection and site design has been made with a view to avoiding or minimising economic loss (2.8.345).

    d. Any residual effects on future viability of other projects should be given substantial weight (2.8.347).

20. Given the weight to be given to future viability of other projects, and the express requirements to seek to avoid or minimise economic loss, in my view it is clear that compensation for economic loss *may* be required in any particular case.

21. As a matter of principle, addressing economic impacts and securing compensation is consistent with the the normal operation of the development consent system. Whilst economic viability may often be irrelevant in the planning system, it is clearly capable of being a material consideration: see e.g. *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2011] 1 AC 437,

paragraph 59. Impacts on viability of other schemes may, in particular, be relevant where those impacts will have adverse planning consequences. A good example of this is the retail impact test in the NPPF, where it is necessary to consider the impact of some proposals on existing and future investment in existing town centres. In the offshore wind context, if the effect of consenting one wind farm was to prevent the delivery of another, then this would in my view be an obviously material planning consideration (not least because any benefit of delivering the second would have to be offset by the disbenefit of losing the first wind farm).

22. Further, in the context of an NPS which is relevant to a decision to grant development consent, and not solely planning permission, there is an obvious relevance of matters of compensation since a DCO will routinely include provisions to acquire land or rights. This often includes provisions to grant statutory authority to interfere with rights or cause nuisance, coupled with provisions to ensure that compensation is payable in cases where such matters could no longer be enforced under private law. Whilst the quantum of compensation is not fixed in DCOs, they invariably make provision for the application of compensation provisions, thus ensuring that the measures are compatible with both common law principles and Article 1 of the First Protocol to the ECHR. I return to these principles below.

23. For those reasons, I do not think that proposed paragraph 2.8.233 of draft EN-3 should be read as precluding mitigation of economic loss through compensation, since that would make an assumption that those losses were irrelevant for planning purposes (which they may not be); and would make an assumption that compensation for losses is not part of the framing of the DCO (which it invariably is).

Requirement for compensation

24. The starting point as to whether there is a requirement for compensation is the absence of a clear route to the recovery of financial losses from wake loss under the general law if the new wind farm did not benefit from statutory authority. Absent specific provisions in the DCO, it is unclear whether the authorisation granted by the DCO would result in any or any adequate compensation being achieved. Simply saying, as the draft NPS does, that it is a matter to be managed between disputing developers suggests that there is some way in which that dispute can be managed and adjudicated upon. For present purposes it is unnecessary to seek to resolve this question, and it seems to me unlikely that it could be resolved definitively without a ruling by the appellate courts.

25. The particular problem with this uncertainty is that it means that the Secretary of State cannot make assumptions about how wake loss issues will ultimately affect each relevant development, and therefore whether they amount to a good reason to withhold development consent for the project under consideration. Put another way, if no provision is made in the ODOW DCO, the Secretary of State does not know whether and to what extent the Applicant and the Equinor and Ørsted IPs will be able to resolve matters by commercial agreement, and what impact this will have on the future financial viability of each respective project.

26. The Secretary of State cannot assume that compensation will be recovered to address any impacts on viability, and thus cannot assume whether particular projects will be delayed or diminished as a result of wake effects from the scheme under consideration.

27. It follows that in my view there is a clear case for expressly addressing compensation for wake loss in the DCO. This will allow the Secretary of State to conclude that those effects *can* be addressed such that an impact on viability of other projects is avoided. Without such a provision, it is unclear how a conclusion can be reached either way on the policy question of whether the development of ODOW will be likely to affect the future viability of the seven wind farms, and thus whether there is a matter which should be given "substantial weight" in the decision-making process.

28. In assessing the consequences for the viability of other projects, the Secretary of State must have regard to the terms on which development consent would be granted, but also the consequences of granting development consent without provision for the payment of compensation for losses.

29. If it is accepted, as the Equinor and Ørsted IPs suggest, that there will be an impact on the economic viability of the seven wind farms towards the end of their operational life such that they may be decommissioned early, then it seems clear that this is an effect on future viability. The provision of a compensation mechanism is capable of addressing the likely residual wake loss after all reasonable steps have been taken to avoid the losses through scheme design, therefore according with the mitigation hierarchy.

30. I would therefore summarise the position as follows:

    a. If no provision is made in the DCO the Secretary of State cannot assume that impacts on viability will be resolved by agreement between the parties;

b. Early decommissioning is an effect on future viability;

c. Assuming the Secretary of State accepts the Equinor and Ørsted IPs' case, then absent provision in the DCO, there is an effect on the future viability of the seven wind farm projects which can only be mitigated with certainty through provision in the DCO.

31. Whilst the future viability of the seven wind farms is a material consideration as a result of the terms of the EN-3, it seems to me that the same analysis could in principle apply to wake losses which do *not* reach that threshold of impacting viability. It is unclear why wake loss should be treated differently from any other effect in this context in that the Applicant and the Secretary of State should consider how such adverse impacts can be avoided or mitigated, and ultimately compensated for as necessary. Nonetheless it is clear that the policy threshold for giving "substantial weight" to economic impacts is an impact on future viability.

Requirement or protective provision

32. As I see it, the difficulty with a requirement is that it does not give clarity as to how these issues will ultimately be resolved. The Awel y Mor requirement does not resolve these matters, although it does impose a "check" on ensuring that the project does not proceed until they have been reconsidered. However, it neither secures nor excludes the payment of compensation.

33. There is a general question as to whether a requirement can secure the payment of compensation. Section 120(2) Planning Act 2008 states that requirements may *in particular* correspond to what could be imposed as a planning condition. A planning condition cannot require the payment of compensation: *DB Symmetry v Swindon BC* [2022] UKSC 33. However, the fact that a requirement *may* fulfil the role of a planning condition does not mean that all requirements must fulfil that role. Further, s 120(3) read with paragraph 36 of Part 1 of Schedule 5 makes clear that a development consent order may make provision for the payment of compensation, without providing how that should be secured. In my view, therefore, a requirement may require the payment of compensation.

34. It is however entirely clear that a protective provision secured by a DCO may require the payment of compensation or provide for an indemnity. This is a common form of drafting, and as the Equinor IPs have noted, it appears in other made DCOs.

35. A further advantage of a protective provision is that it can be enforced directly between the parties, without the need for enforcement action in respect of a breach of requirements by an enforcing authority. Protective provisions may also be modified through agreement. Should disputes arise, they can be resolved through any applicable arbitration provision without the Secretary of State's involvement.

36. In those circumstances, it seems to me that the desire (in the draft NPS) for such matters to be resolved between developers is better achieved by protective provisions, rather than through a requirement which will necessarily have to be determined and enforced by the enforcing authority.

37. I do not think that the absence of precedent for the use of protective provisions is a determinative, or even important, factor in deciding whether or not they should be imposed here. The facts are very specific. The issue of wake loss is under active consideration in a number of ongoing cases. There has not been any decision of the Secretary of State to date which has rejected the use of protective provisions, and which would therefore have to be distinguished.

38. Moreover, I think the examples in the Equinor IPs' position statement are good ones. The impacts on a train operating company of disruption to a railway line by a statutory undertaker, or the impacts on the fishing industry of construction activity for offshore wind farms, provide a helpful parallel since in neither case is there a clear-cut route to compensation under the statutory compensation code. In other words, they are circumstances where provision on the face of the DCO is appropriate to avoid either lengthy disputes, or worse still uncompensated interferences with the economic interests of others.

39. Finally, I have been asked to consider the Ørsted IPs' broader submissions in the context of investment in offshore wind, and the relationship with ongoing leasing of new locations for wind farms. Whilst these submissions go to the merits of the proposed protective provisions rather than to the legal tests to be applied, in my view the points raised are plainly material to the Secretary of State's determination of the ODOW application. The absence of clear basis upon which wake losses will be addressed inevitably creates uncertainty both for the ODOW project, and for others.

40. For the reasons I have set out above, I disagree with the Applicant's overarching assertion that the proposed protective provisions have "no basis in law, policy or precedent". The legal basis for securing compensation under a DCO is clear, being expressly one of the matters that can be provided for. As a matter of policy, EN-3

makes clear that economic impacts which affect future viability of other projects must be considered in deciding whether to grant development consent, and on what terms. In relation to precedent, there is precedent for securing compensation measures under protective provisions, and for addressing wake effects on the face of a DCO. There is no decision where a case for protective provisions in terms such as those now sought has been rejected.

Richard Turney KC

Landmark Chambers

17 December 2025

Pinsent Masons

APPENDIX 2

FULL REQUIREMENT WITH PROPOSED AMENDMENTS

Wake effects

[33].— (1) No operation of any wind turbine generator forming part of the authorised development may begin until either:

(a) a wake effects plan has been submitted to and approved by the Secretary of State following consultation with each of the owners of the existing and proposed third party offshore wind farms; or

(b) The undertaker has provided evidence to the Secretary of State that alternative mitigation for wake effects has been agreed with each of the owners of the existing and proposed third party offshore wind farms; or

(c) A combination of (1)(a) and (1)(b) is provided to and agreed by the Secretary of State to ensure that the wake effects of the authorised project on each of the existing and proposed third party offshore wind farms are mitigated.

(2) Any~~The~~ wake effects plan provided in accordance with paragraphs (1)(a) or 1(c) must include:

(a) a wake effects assessment showing the modelling used to calculate the wake effect of the proposed final design on the annual energy production of the existing and proposed third party offshore wind farms;

(b) details of ~~reasonable~~ steps that have been taken in the final design of the authorised development or measures which will be applied during the operation of the authorised development (or a combination of both) ~~by the undertaker~~ to minimise wake effects on the existing and proposed third party offshore wind farms ~~whilst maximising~~ without materially reducing the capacity of the authorised development ~~within the identified technical, environmental and other constraints of the authorised development~~;

(c) the timescales for implementation of any wake effect mitigation measures;

(d) any time limits for wake effect mitigation measures;

(e) details of any necessary monitoring of the wake effect mitigation measures; and

(f) details of consultation with each of the owners of the existing and proposed third party offshore wind farms and the extent of any agreement or disagreement with them regarding:

(i) whether any design changes or operational measures could further reduce the wake effect impacts; and

(ii) the conclusions of the wake effects assessment under paragraph (1)(a).

(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.

(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.

(5) Each approved wake effects plan submitted under this requirement must be implemented as approved.