Pinsent Masons

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 19 December 2025 (the "**RfI**"). The RfI invites all Interested Parties to comment on the information provided in response to the Secretary of State's fifth information request (dated 17 November 2025). The Ørsted IPs consider that there is one document submitted by the Applicant to which they have not yet responded and which warrants a response from the Ørsted IPs – this is the Applicant's Response to the Second All Parties Consultation **[C5-009]** (the "**Applicant's Response**").

The Ørsted IPs consider that the majority of points made by the Applicant in the Applicant's Response 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]**, **[C2-009]** and **[C5-005]** – the latter of which appended a legal opinion from Richard Turney KC (the "**KC Opinion**") in relation to the matter of wake loss and appropriate protection on the face of the DCO). As with previous RfI responses, 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 certain specific points made in the Applicant's Response, and therefore do so below.

Further, the Ørsted IPs wish to use this submission to provide their commentary on the Secretary of State's recent decision granting the Five Estuaries Offshore Wind Farm Order 2025 (the "**Five Estuaries DCO**"), which became the first Development Consent Order ("**DCO**") (for which wake loss matters were debated during examination and for which protection for wake impacts was sought by affected assets) to not include any protection (in the form of a DCO requirement or protective provisions) for those assets. This matter is addressed in a separate sub-heading below, but the Ørsted IPs note from the outset of this submission that they consider it would be unreasonable and irrational for the Secretary of State to adopt a similar approach for the DCO (if made) for the Outer Dowsing Project, as this would represent an entirely inconsistent position from the protection afforded to operational assets owned by Ørsted imposed in Requirement 29 of the Mona Offshore Wind Farm Order 2025 ("**Mona DCO**") and Requirement 13 of the Morecambe Offshore Windfarm Generation Assets Order 2025 ("**Morecambe DCO**").

The Ørsted IPs maintain at the outset of this submission 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 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 industry framework.

Applicant's Response

Pages 10-15 of the Applicant's Response contain the Applicant's position on various matters raised by the Ørsted IPs in the Ørsted IPs' previous submission. The Ørsted IPs wish to address the following points made by the Applicant.

On pages 11, 12 and 15 of the Applicant's Response, the Applicant reiterates its position that "*the imposition of the protective provisions advocated by the Ørsted IPs would be wholly inappropriate and contrary to law, policy and precedent*". The Ørsted IPs wish to direct the Secretary of State's attention to pages 5-6 and 13 of **[C5-005]**, as well as paragraph 40 the KC Opinion, for a direct rebuttal of the Applicant's argument in this respect.

Further, the Ørsted IPs note that the relevant question for the Secretary of State is not whether protective provisions have been included in every previous project, but whether, on the facts of the Outer Dowsing Project, they are necessary and proportionate to secure compliance with NPS EN-3 in relation to acknowledged inter-project wake effects on existing infrastructure.

The Applicant also states, on page 12 of the Applicant's Response, that "*the protective provisions set out in Parts 13 and 14 of Schedule 18 of the draft DCO (document 3.1) provide sufficient protection and assurance that coexistence can operate effectively*". The Ørsted IPs wish to direct the Secretary of State's attention to the first paragraph of page 2 of **[C5-005]**, in which the Ørsted IPs reiterate that 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). The Ørsted IPs wish to note that they have received no engagement from the Applicant on the wording of the proposed protective provisions – as stated at the top of page 5 of **[C5-005]**, the Ørsted IPs would welcome meaningful discussions with the Applicant on this wording. Furthermore, the Ørsted IPs consider there to be no realistic prospect of a bilateral agreement materialising with the Applicant in the absence of protection provided on the face the DCO (if made) for the Outer Dowsing project.

On page 13 of the Applicant's Response, the Applicant states that "*the dispute resolution procedure in the protective provisions proposed by the Ørsted IPs is not appropriate*". The Ørsted IPs entirely disagree with this statement. As previously stated, the protective provisions proposed by the Ørsted IPs align favourably with paragraph 2.8.229 of the new National Policy Statement for Renewable Energy Infrastructure ("**NPS EN-3**") (though the Ørsted IPs note that the Outer Dowsing Project is to be determined in accordance with the previous NPS EN-3), as they provide for the appointment and use of jointly-appointed independent third-party experts (i.e. a balanced and robust framework for future adjudication) 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 draft 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 as made 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 if 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. Indeed, paragraph 35 of the KC Opinion expressly states that "*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*".

In the context of arbitration, the Applicant also refers to the recommendation of the Examining Authority for the Mona DCO as an example of why the dispute resolution procedure proposed by the Ørsted IPs via the protective provisions is inappropriate. It is important to note, though, that the Examining Authority (and Secretary of State) for the Mona DCO did not have a set of protective provisions to consider – as explained on page 7 of **[C5-005]**, the Ørsted West Coast

IPs[1] did not submit protective provisions for the Mona DCO (as the facts and circumstances were different to those of the Outer Dowsing Project). Therefore, the fact that protective provisions have not been included by the Secretary of State in the Mona DCO (with a requirement instead being included in that DCO as a solution to wake effects) should not be taken to set a precedent whereby protective provisions (including the dispute resolution procedure contained within) are not an appropriate solution to wake effects.

The Applicant then says, on pages 13 and 14 of the Applicant's Response, that the Ørsted IPs' submissions in relation to financial compensation "*relate to the matter of wake effects in general, rather than the specific wake effects from the Project on the Ørsted IP assets*". The Ørsted IPs, again, disagree with this statement. The Ørsted IPs have repeated their position on financial compensation, in the context of NPS EN-3, on numerous occasions, and direct the Secretary of State to pages 5-7 of **[C5-005]** and paragraphs 23 and 24 of the KC Opinion, in which Counsel states that there is no preclusion of "*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)*" and "*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*". This KC Opinion was provided with full knowledge and details of the specific level of impact of the Outer Dowsing Project on the Ørsted IPs' assets, and therefore the Applicant's assertion that the Ørsted IPs are proposing the imposition of financial compensation provisions "*without any consideration of the scale of the relevant impact*" is entirely false. The Ørsted IPs have not advocated for financial compensation being included as part of *any* offshore wind DCO; rather, the Ørsted IPs have continually stated that the undeniably significant financial impact (of £199m undiscounted, per the Ørsted IPs' Updated Financial Analysis in Appendix 1 of the Ørsted IPs' Submission between Deadlines 5 and 6 **[AS-037]**) on Hornsea 1 Limited, the Hornsea 2 Companies and Race Bank Wind Farm Limited is worthy of compensation.

The Applicant goes on to reference paragraph 2.8.233 of the new NPS EN-3, which states that "*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*" (emphasis added). However, as the Ørsted IPs have consistently maintained, the new NPS EN-3 deliberately stops short of precluding the type of inter-project compensation arrangements that underpin the protective provisions proposed by the Ørsted IPs. The option of inter-project compensation arrangements made available through the proposed protective provisions provide a reasonable and proportionate means of addressing wake effects, either in full, or with respect to any residual wake effects that remain following the implementation of physical mitigation measures, applied at the Applicant's discretion.

In this context, the Ørsted IPs also wish to direct the Secretary of State to pages 6 and 7 of **[C5-005]**, namely the point that it is clearly the case that DCO requirements imposed in recently-made offshore wind DCOs (such as Requirement 29 of the Mona DCO and Requirement 13 of the 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 pursuant to that agreement.

On page 14 of the Applicant's Response, the Applicant criticises the Ørsted IPs for not identifying mitigation measures they would consider to be "*adequate*" or "*full*", and asserts that the absence of mitigation measures which avoid any overall net reduction in electricity generation is clear from

[1] 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).

the evidence put forward in respect of the Outer Dowsing Project and other projects. The Ørsted IPs disagree. It is not for affected asset owners to design or model mitigation for a third party's project; the Applicant is the designer of the Outer Dowsing Project and is therefore uniquely placed to assess alternative layouts, turbine spacing, operational modes or control strategies that could reduce wake effects. To date, the Applicant has provided no project-specific modelling of any such measures and has not demonstrated to the Secretary of State that reasonable mitigation options are unavailable. The fact that certain mitigation options may entail trade-offs in generation does not justify the absence of any structured mechanism to consider mitigation, nor does it discharge the Applicant's obligation under NPS EN-3 to avoid, minimise or mitigate impacts on existing infrastructure as far as reasonably practicable. Reliance on non-site-specific analysis prepared by applicants for other projects does not remedy this evidential gap. In these circumstances, a DCO-secured mechanism requiring proper consideration of mitigation, informed by project-specific analysis, remains necessary.

The Applicant goes on to state that the "*lack of evidence as to the availability of any mitigation that avoids an overall net reduction in electricity generation is clear from both the evidence before the SoS in this case and in others*", referring to the Five Estuaries, Mona and Dogger Bank South offshore wind farm projects. Taking these in turn, the Ørsted IPs provide commentary on the Five Estuaries DCO in the corresponding sub-section below. As for the Mona DCO, despite the comments highlighted by the Applicant it remains a matter of fact that the Secretary of State felt it necessary to include protection for waked projects on the face of the DCO via a requirement (and, as noted above, the Secretary of State was not required to consider the possibility of using protective provisions instead of a requirement, as the Mona DCO did not have a set of protective provisions proposed for it). As the Secretary of State recognised for the Mona DCO, acknowledged adverse impacts cannot be ignored simply because understanding of mitigation is evolving or because an applicant considers mitigation unlikely; the absence of certainty is a reason to secure a mechanism, rather than to avoid one. Lastly, the Ørsted IPs have already criticised the analysis of potential mitigation put forward by the applicants of the Dogger Bank South Offshore Wind Farm Project on the grounds that it was not site specific and not deserving of the conclusions drawn from it. Therefore, the Applicant for the Outer Dowsing Project should not seek to rely on such analysis for its conclusions on mitigation. Even if such analysis was not flawed, it would not provide any project-specific comfort to the Ørsted IPs that the wake impacts from the Outer Dowsing Project cannot be mitigated. The Applicant's failure to provide any evidence in this regard is telling, with a preference instead shown for reliance on flawed analysis from other DCO applications.

In any event, however, the protective provisions proposed by the Ørsted IPs include a mechanism whereby the Applicant can consider whether to mitigate the significant wake impacts of the Outer Dowsing Project on the Ørsted IPs assets via physical measures, financial compensation, or a combination of both. The Applicant refers, at page 14 of the Applicant's Response, to these protective provisions removing "*any objective test for ascertaining whether or not such mitigation is adequate*" – this claim is rebutted by the Ørsted IPs, as the conclusion of the independent expert(s) (referred to in the mechanism proposed by the protective provisions) on whether full mitigation has been secured amounts to an objective test of adequacy.

On page 15 of the Applicant's Response, the Applicant states that "*the question of the administrative burden on the SoS is not a relevant matter for decision-making*" and that the "*removal of an administrative burden from the SoS is not a legitimate reason for imposing the proposed restrictions in protective provisions*". The Applicant is misquoting the Ørsted IPs' position in this regard – the Ørsted IPs are not suggesting that the removal of an administrative burden from the Secretary of State via the protective provisions is a legal justification for their inclusion; rather, it is a matter of fact that this is a benefit of the proposed protective provisions in comparison to a DCO requirement. As previously set out by the Ørsted IPs, the protective provisions better align with the policy direction of wake compensation disputes being managed commercially, because they shift the resolution procedure to the appointment of independent experts and/or arbitration between developers, rather than discharge and/or appeal routes through the planning system.

Finally, the Applicant states on page 15 of the Applicant's Response that "*the approach advocated by the Ørsted IPs would not achieve its intended, system-wide aim*" and that the "*need for the SoS to consider the specific impacts of each individual project means that, properly applied, there would be no guarantee of similar protective provisions being imposed on future development consent orders*". The suggestion that the Ørsted IPs' position is more general and industry-based, rather than being specific to the Outer Dowsing Project, is rebutted by the Ørsted IPs. Throughout the examination of the Outer Dowsing Project (and subsequently), the Ørsted IPs have made it clear that the specific impacts of the Outer Dowsing Project on the Ørsted IPs' assets warrant necessary and proportionate protection on the face of the DCO. The fact that some of the Ørsted IPs' reasoning relates to wider industry benefits does not mean that the points raised are not specific to the Outer Dowsing Project; rather, it serves to enhance the Ørsted IPs' position by highlighting those wider benefits alongside the specific, required protection for this project – if the Secretary of State is minded to include the protective provisions proposed by the Ørsted IPs on the face of the DCO for the Outer Dowsing Project, it will set a helpful precedent across the industry (ensuring system-wide benefits) whereby compensation is payable for wake impacts on a project-specific basis.

Five Estuaries DCO

As stated above, the Ørsted IPs wish to use this submission to provide some comments on the Secretary of State's recent decision granting the Five Estuaries DCO, which became the first DCO (for which wake loss matters were debated during examination and for which protection for wake impacts was sought by affected assets) to not include any protection (in the form of a DCO requirement or protective provisions) for those assets.

The sole project seeking protection through the Five Estuaries DCO was the East Anglia Two Offshore Wind Farm ("**EA2**"). Unlike EA2, the Race Bank Offshore Wind Farm, the Hornsea One Offshore Wind Farm, and the Hornsea Two Offshore Wind Farm are all currently operational assets. More importantly, all three of these assets took their Final Investment Decision ("**FID**") prior to the start of the Leasing Round 4 ("**LR4**") process (in 2015, 2016 and 2017 respectively). The Race Bank Offshore Wind Farm and the Hornsea One Offshore Wind Farm were both operational before LR4 launched in September 2019, and the Hornsea Two Offshore Wind Farm began generating power in 2021, before The Crown Estate signed the Agreement for Lease for the Outer Dowsing Project in 2023. The owners of these Ørsted IPs' assets could not have known that the Outer Dowsing Project would be developed at the point of taking FID and therefore the significant unmitigated wake impacts arising from the Outer Dowsing Project were not, and are not, factored into the assumed operating margins which the business cases for these projects rely upon.

The absence of protection in relation to wake impacts on the face of the Five Estuaries DCO does not justify the absence of protection of the Ørsted IPs' operational assets from the significant impacts imposed by the Outer Dowsing Project. One only has to look at the indistinguishable assets of the Ørsted West Coast IPs (which are protected by requirements on the face of the Mona DCO and the Morecambe DCO) as examples of protective precedent that should be followed. If the DCO for the Outer Dowsing Project was granted without any protection on its face for the Ørsted IPs that continue to hold objections in relation to wake loss, that outcome would be unacceptable to the Ørsted IPs – indeed, the Ørsted IPs consider it would be unreasonable and irrational for the Secretary of State to reach such a decision.

Finally, and in relation to the arguments regarding mitigation covered earlier in this submission, the Ørsted IPs note that the fact that certain mitigation options for the Five Estuaries DCO would reduce generating capacity does not justify the absence of any mechanism to consider mitigation in the DCO for the Outer Dowsing Project. Recent decisions in the offshore wind industry, namely the Mona DCO and Morecambe DCO, confirm that where wake effects on existing assets are acknowledged, the appropriate response is to secure a structured, enforceable mechanism for mitigation consideration and consultation, including the possibility of commercial agreement between the relevant developers.

Conclusion

In this submission, the Ørsted IPs have rebutted certain points made by the Applicant in the Applicant's Response. In doing so, the Ørsted IPs have again 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 that the Outer Dowsing Project will have on the Ørsted IPs' assets, including provision for the timebound appointment of independent third-party experts (and an arbitrator if required). The Ørsted IPs also wish to draw the Secretary of State's attention to the KC Opinion at Appendix 1 of **[C5-005]**, which provides clear justification for this position.

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.

Lastly, the Ørsted IPs have distinguished the circumstances of the Outer Dowsing Project from the Five Estuaries DCO, and note that it would be unreasonable and irrational for the Secretary of State to adopt a similar approach taken on the Five Estuaries DCO for the DCO (if made) for the Outer Dowsing Project, as this would represent an entirely inconsistent position from the protection afforded to assets owned by Ørsted imposed in Requirement 29 of the Mona DCO and Requirement 13 of the Morecambe DCO.