

27 February 2025

The Morgan Offshore Wind Project: Generation Assets Development Consent Order Application

Deadline 6: Closing Statement of BAE Systems (being (i) BAE Systems Marine Limited – Walney Aerodrome; and (ii) BAE Systems (Operations) Limited – Warton Aerodrome)

1. Introduction

- 1.1 BAE Systems (which for the purpose of this submission comprises BAE Systems Marine Limited at Walney Aerodrome and BAE Systems (Operations) Limited (**BAE Operations**)) at Warton Aerodrome) is responsible for ensuring the safe, secure and efficient operation of air traffic to and from the Walney and Warton Aerodromes.
- 1.2 This role involves managing airspace, coordinating with air traffic services (**ATS**), and adhering to aviation standards and regulations. BAE Systems is also responsible for assessing any potential impacts on radar systems, communication networks, and overall flight safety that may arise from developments or activities within its operational area.
- 1.3 Eversheds Sutherland (International) LLP are instructed by BAE Systems in relation to the proposed development consent order application (the **Application**) made by Morgan Offshore Wind Limited (the **Applicant**) for the proposed Morgan Offshore Wind Generation Assets (the **Project**).
- 1.4 This submission constitutes the closing statement of BAE Systems in respect of those matters raised during the Examination which have not been satisfactorily resolved (the **Outstanding Matters**). Furthermore, where relevant, this submission provides commentary on behalf of BAE Systems in respect of the Applicant's submissions received by Deadline 5 – in particular, the Applicant's Response to ExAQ2: Aviation and Radar Questions [**REP5-015**]; and the Aviation Mitigation Progress Report [**REP5-020**].

2. Outstanding Matters

2.1 The Outstanding Matters are threefold:

- 2.1.1 Confirmation of the full extent of the impacts of the Project (both in isolation and taken together with the projects included within the Applicant's cumulative effects assessment) on the operation of ATS at Walney and Warton Aerodromes and whether those impacts require and are capable of being mitigated (**Matter 1**);
- 2.1.2 The identification of a viable mitigation solution (following technical and operational assessment) to address the impact of the Project on the operation of the Primary Surveillance Radar at Warton Aerodrome (**PSR**) and the air traffic control operations of the Ministry of Defence (**MOD**) and/or BAE Operations (including both civil and military aircraft operations) which are reliant upon the PSR (**Matter 2**); and
- 2.1.3 The agreement of suitable wording for requirements to be included in the Applicant's draft Development Consent Order (**DCO**) in order to secure the mitigation referred to in paragraphs 2.1.1 and 2.1.2 above (**Matter 3**).

FOR THE AVOIDANCE OF DOUBT, BAE Systems would like to put on record its non-acceptance of draft DCO requirements 5 and 6 [contained in the draft DCO submitted at Deadline 5: **REP5-017**]. The wording of these requirements is NOT AGREED.

2.2 We turn now to address the Outstanding Matters in turn:

Matter 1

- 2.3 As the Examining Authority (**ExA**) has previously been advised, there are two outstanding workstreams in respect of Matter 1:

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2.3.1 A report from NATS to confirm the full extent of the impact of the Project (both in isolation and taken together with the projects included within the Applicant's cumulative effects assessment) on the operation of ATS at Walney and Warton Aerodromes (the **NATS Report**). Specifically, consideration of the following matters is understood to be within the scope of the NATS Report:

2.3.1.1 Instrument Flight Procedures (**IFP**), Minimum Sector Altitude (**MSA**) and **VHF** (Very High Frequency) radio communications at Walney Aerodrome; and

2.3.1.2 Direction Finding and VHF and **UHF** (Ultra High Frequency) radio communications at Warton Aerodrome.

The Applicant placed the contract with NATS for preparation of their report on 21 February 2025, after which additional information was requested regarding certain of the Project design parameters, the receipt of which was identified as a pre-requisite to NATS being able to commence its work. It is understood that the additional information has now been provided; however, the lead in time for completion of the NATS Report could be anything up to 20 weeks.

2.3.2 An updated report from Osprey to address IFP and MSA considerations at Warton Aerodrome (with Osprey being the Approved Procedure Design Organisation for the Aerodrome) (the **Osprey Report**).

So far as BAE Systems is aware, no timescale for completion of the Osprey Report has been provided, albeit the requisite instruction has been given by the Applicant for work on the report to commence. As such, BAE Systems can offer no assistance to the ExA in this regard, nor give an indication of when it will be able to clarify its position and confirm the satisfactory resolution of this matter.

2.4 Whilst the NATS and Osprey Reports have been commissioned, delivery of the completed reports will not be before the close of the Examination. Clearly, this is a critical juncture in the consenting process for the Project. Yet, BAE Systems finds itself in the wholly unsatisfactory position of not knowing the full extent of the impact of the Project on the operation of ATS at Walney and Warton Aerodromes.

2.5 In the Applicant's Response to ExAQ2: Aviation and Radar Questions [**REP5-015**], the sweeping statement is made (in response to AR 2.4 concerning VHF communications) that *"there is no potential for a significant environmental effect that needs to be considered through the EIA"*. However, the potential effects arising from the Project in respect of VHF and UHF communications at Walney and Warton Aerodromes is an issue which has emerged since production of the Applicant's Environmental Statement.

2.6 There is currently a gap in the environmental information pertaining to the Project which is before the ExA and which the NATS Report has been commissioned by the Applicant to address. There can be no sound basis on which to draw firm conclusions as to what the impacts of the Project on the operation of ATS at Walney and Warton Aerodromes are likely to be (whether significant in EIA terms or otherwise) and whether they are capable of mitigation until the completed NATS and Osprey Reports have been issued.

2.7 Furthermore, in the updated version of the Aviation Mitigation Progress Report submitted at Deadline 5 [**REP5-020**], in respect of the entries at Table 1.1 concerning the interests of BAE Systems, it is stated that *"Having now included a requirement in the draft DCO, the Applicant considers that this matter has been resolved from a consenting perspective"*. BAE Systems does not share the Applicant's view and rejects the aforesaid statement in the strongest possible terms.

2.8 It cannot be the case that a critical consenting issue – concerning, as it does in this case, the potential for and extent of a project to give rise to adverse impacts – can be considered resolved in circumstances where the work being undertaken to properly assess the issue is ongoing and where the draft DCO requirement(s) upon which that resolution relies isn't agreed by the relevant 'expert' interested parties.

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Matter 2

- 2.9 Regarding the impact of the Project on the operation of the PSR and the air traffic control operations of MOD and/or BAE Operations (including both civil and military aircraft operations) which are reliant upon the PSR, the Applicant has now put forward a mitigation proposal.
- 2.10 The Applicant's mitigation proposal was received by MOD on 21 February 2025 (the **Mitigation Proposal**). Regarding next steps, the Mitigation Proposal is required to be technically and operationally assessed by the relevant experts at MOD and BAE Operations in order to establish that the mitigation is viable. Whilst MOD has a target timescale of 6 weeks for undertaking such assessments, it is anticipated that the 6-week timescale will be exceeded in this instance due to the fact that the statutorily safeguarded asset is of a type that is new (non-standard) to BAE Systems.
- 2.11 It is not currently possible to accurately estimate the required timescale for completion of the assessment of the Mitigation Proposal. However, this workstream is clearly going to extend beyond what remains of the Examination timetable. Accordingly, BAE Systems is not going to be in a position to confirm the satisfactory resolution of Matter 2 before Deadline 7 and the scheduled completion date for the Examination (this being 10 March 2025).
- 2.12 BAE Systems understands that MOD's objection to the Application is required to remain in place and will not be removed until such time as a viable mitigation proposal, which has been demonstrated following technical and operational assessment to be fit for purpose and capable of addressing the impact of the Project on the operation of the PSR, has been identified.

Matter 3

- 2.13 As explained in paragraph 2.1.3 above, the wording of draft DCO requirements 5 and 6 [contained in the draft DCO submitted at Deadline 5: **REP5-017**] is not agreed.
- 2.14 BAE Systems will continue to engage with the Applicant on the subject of requirements. However, agreement of a suitable form of words necessarily requires further progress to be made in respect of the NATS and Osprey assessment work, as well as the detailed analysis of the Mitigation Proposal (specific to the PSR only).
- 2.15 These workstreams (and their findings) will inform the drafting of the requirements which the parties agree must be secured through the DCO in order to mitigate the impacts of the Project on the operation of ATS at Walney and Warton Aerodromes, as well as on the operation of the PSR, and the safeguarding measures they will need to incorporate.
- 2.16 For the reasons outlined, the DCO requirement wording which is proposed by BAE Systems for insertion into the draft DCO is currently under review and, with regard to the DCO requirement concerning the PSR, will need to be settled following further engagement between BAE Systems and the Defence Infrastructure Organisation (**DIO**) – Safeguarding Team – as the representative for MOD. Once agreed between BAE Systems and DIO, it is anticipated that DIO will take forward discussions in respect of this requirement with the Applicant.
- 2.17 To assist the ExA, the current requirement wording which is preferred by BAE Systems for insertion into the draft DCO is appended to this submission. This wording is being put forward on a 'without prejudice' basis and may be subject to change. However, it will be BAE Systems' starting point for the purpose of any ongoing discussions around the DCO requirements.

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3. Concluding Remarks

- 3.1 Walney and Warton Aerodromes are considered “critical national infrastructure”, providing essential services to support national security. The Project cannot impede the Aerodromes in fulfilling this crucial function or compromise their ability to deliver, on an uninterrupted basis, national sovereign defence capabilities and safe airport operational and air traffic services that are fit for purpose for both civil and military aircraft operations.
- 3.2 Accordingly, it is imperative that a satisfactory resolution is reached in respect of the Outstanding Matters before the determination of the Application and a decision in respect of whether to grant development consent for the Project is made.

Eversheds Sutherland (International) LLP

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DRAFT DCO REQUIREMENT WORDING: PSR RADAR AT WARTON AERODROME

- (1) No part of any wind turbine generator forming part of the authorised development shall be erected until a Radar Mitigation Scheme has been submitted to and approved in writing by the Secretary of State, in consultation with the MoD and the Operator.
- (2) For the purposes of this requirement –

“**Approved Radar Mitigation Scheme**” means the Radar Mitigation Scheme as approved by the Secretary of State, in consultation with the MoD and the Operator, in accordance with sub-paragraph (1) of this requirement.

“**MoD**” means the Ministry of Defence as represented by Defence Infrastructure Organisation – Safeguarding, St George’s House, DIO Head Office, DMS, Whittington, Lichfield, Staffordshire WS14 9PY or any successor body.

“**Operator**” means BAE Systems (Operations) Limited (incorporated in England and Wales with company number 01996687, whose registered office is at Victory Point, Lyon Way, Frimley, Camberley, Surrey GU16 7EX) or such other organisation as is licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services at Warton Aerodrome or any organisation employed by BAE Systems (Operations) Limited to provide an air traffic service at Warton Aerodrome.

“**PSR**” means the Primary Surveillance Radar at Warton Aerodrome or any upgrade thereto or replacement thereof.

“**Radar Mitigation Scheme**” means a scheme designed to prevent and remove any adverse impacts arising at any time from the authorised development upon the operation of the PSR and the air traffic control operations of the MoD and/or the Operator (including both civil and military aircraft operations) which are reliant upon the PSR, such scheme to remain in place throughout the lifetime of the authorised development and for so long as any of the wind turbine generators forming part of the authorised development are operational, provided that the PSR remains an operational requirement.
- (3) No wind turbine generator erected as part of the authorised development shall be permitted to rotate its rotor blades about its horizontal axis other than for the purpose of testing the proposed mitigation solution identified in the Approved Radar Mitigation Scheme until the Secretary of State, following consultation with the MoD and the Operator, has confirmed in writing that he/she is satisfied that:
 - (i) the proposed mitigation solution has been subject to technical and operational assessment and, in particular, has undergone ‘in-situ’ testing in line with the requirements of (and for the time period(s) specified in) the Approved Radar Mitigation Scheme;
 - (ii) the performance criteria required to be met by the proposed mitigation solution, as specified in the Approved Radar Mitigation Scheme, have been met; and
 - (iii) the Approved Radar Mitigation Scheme has been implemented by the undertaker in accordance with sub-paragraph (4)(i) of this requirement.

- (4) The undertaker shall, at its sole cost:
- (i) implement the Approved Radar Mitigation Scheme prior to any wind turbine generator forming part of the authorised development being permitted to rotate its rotor blades about its horizontal axis;
 - (ii) thereafter maintain, replace and/or upgrade (and comply with all obligations contained in) the Approved Radar Mitigation Scheme (including without limitation resolving any failure (howsoever caused) of the implemented mitigation solution (or any part thereof)) throughout the lifetime of the authorised development, provided that the PSR remains an operational requirement; and
 - (iii) in the event of an amendment(s) being made to the authorised development which gives rise to different and/or additional adverse impacts (over and above the impacts identified by the environmental statement) on the operation of the PSR and the air traffic control operations of the MoD and/or the Operator (including both civil and military aircraft operations) which are reliant upon the PSR, work with the MoD and the Operator in good faith to implement and to thereafter maintain (throughout the lifetime of the authorised development, provided that the PSR remains an operational requirement) any additional mitigation measures required to prevent and remove the aforesaid different and/or additional adverse impacts.

DRAFT DCO REQUIREMENT WORDING: OPERATION OF WALNEY AERODROME
(AIR TRAFFIC SERVICES)

- (1) No part of any wind turbine generator and no part of the offshore substation platform forming part of the authorised development shall be erected until:
- (i) an Air Traffic Services (“ATS”) Mitigation Scheme has been submitted to and approved in writing by the Secretary of State, in consultation with the CAA and the Operator; and
 - (ii) the Secretary of State, following consultation with the CAA and the Operator, has confirmed in writing that he/she is satisfied that the Approved ATS Mitigation Scheme has been implemented by the undertaker in accordance with sub-paragraph (3)(i) of this requirement.

- (2) For the purposes of this requirement –

“**Approved ATS Mitigation Scheme**” means the ATS Mitigation Scheme as approved by the Secretary of State, in consultation with the CAA and the Operator, in accordance with sub-paragraph (1)(i) of this requirement.

“**ATS Mitigation Scheme**” means a scheme which is designed to prevent and remove any adverse impacts arising at any time from the authorised development on the operation of Walney Aerodrome, including but not limited to:

- (i) the Aerodrome’s ability to provide and/or deliver, on an uninterrupted basis, (a) national sovereign defence capabilities; (b) safe airport operational and air traffic services that are fit for purpose for both civil and military aircraft operations; and (c) any other operational requirements which are identified by the Operator; and
- (ii) the Aerodrome’s IFP, MSA and VHF communication systems,

such scheme to remain in place throughout the lifetime of the authorised development and for so long as any part of the authorised development remains in situ.

“**CAA**” means the Civil Aviation Authority constituted by the Civil Aviation Act 1982.

“**IFP**” means instrument flight procedures.

“**MSA**” means minimum sector altitude.

“**Operator**” means BAE Systems Marine Limited (incorporated in England and Wales with company number 00229770, whose registered office is at Victory Point, Lyon Way, Frimley, Camberley, Surrey GU16 7EX) or such other organisation as is licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services at Walney Aerodrome or any organisation employed by BAE Systems Marine Limited to provide an air traffic service at Walney Aerodrome.

“**VHF**” means very high frequency.

- (3) The undertaker shall, at its sole cost:
- (i) implement the Approved ATS Mitigation Scheme prior to the erection of any part of any wind turbine generator and any part of the offshore substation platform forming part of the authorised development;
 - (ii) thereafter maintain, replace and/or upgrade (and comply with all obligations contained in) the Approved ATS Mitigation Scheme (including without limitation resolving any

failure (howsoever caused) of the implemented mitigation solution (or any part thereof)) throughout the lifetime of the authorised development and for as long as any part of the authorised development remains in situ; and

- (iii) in the event of an amendment(s) being made to the authorised development which gives rise to adverse impacts on the operation of Walney Aerodrome which are different and/or additional to those identified by the environmental statement, to work with the CAA and the Operator in good faith to implement and to thereafter maintain (throughout the lifetime of the authorised development and for as long as any part of the authorised development remains in situ) any additional mitigation measures required to prevent and remove the aforesaid different and/or additional adverse impacts.

DRAFT DCO REQUIREMENT WORDING: OPERATION OF WARTON AERODROME
(AIR TRAFFIC SERVICES)

- (1) No part of any wind turbine generator and no part of the offshore substation platform forming part of the authorised development shall be erected until:
- (i) an Air Traffic Services (“ATS”) Mitigation Scheme has been submitted to and approved in writing by the Secretary of State, in consultation with the CAA and the Operator; and
 - (ii) the Secretary of State, following consultation with the CAA and the Operator, has confirmed in writing that he/she is satisfied that the Approved ATS Mitigation Scheme has been implemented by the undertaker in accordance with sub-paragraph (3)(i) of this requirement.

- (2) For the purposes of this requirement –

“**Approved ATS Mitigation Scheme**” means the ATS Mitigation Scheme as approved by the Secretary of State, in consultation with the CAA and the Operator, in accordance with sub-paragraph (1)(i) of this requirement.

“**ATS Mitigation Scheme**” means a scheme which is designed to prevent and remove any adverse impacts arising at any time from the authorised development on the operation of Warton Aerodrome, including but not limited to:

- (i) the Aerodrome’s ability to provide and/or deliver, on an uninterrupted basis, (a) national sovereign defence capabilities; (b) safe airport operational and air traffic services that are fit for purpose for both civil and military aircraft operations; and (c) any other operational requirements which are identified by the Operator; and
- (ii) the Aerodrome’s IFP, MSA, DL, VHF and UHF communication systems,

such scheme to remain in place throughout the lifetime of the authorised development and for so long as any part of the authorised development remains in situ.

“**CAA**” means the Civil Aviation Authority constituted by the Civil Aviation Act 1982.

“**DF**” means direction finding.

“**IFP**” means instrument flight procedures.

“**MSA**” means minimum sector altitude.

“**Operator**” means BAE Systems (Operations) Limited (incorporated in England and Wales with company number 01996687, whose registered office is at Victory Point, Lyon Way, Frimley, Camberley, Surrey GU16 7EX) or such other organisation as is licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services at Warton Aerodrome or any organisation employed by BAE Systems (Operations) Limited to provide an air traffic service at Warton Aerodrome.

“**UHF**” means ultra high frequency.

“**VHF**” means very high frequency.

- (3) The undertaker shall, at its sole cost:

- (i) implement the Approved ATS Mitigation Scheme prior to the erection of any part of any wind turbine generator and any part of the offshore substation platform forming part of the authorised development;

- (ii) thereafter maintain, replace and/or upgrade (and comply with all obligations contained in) the Approved ATS Mitigation Scheme (including without limitation resolving any failure (howsoever caused) of the implemented mitigation solution (or any part thereof)) throughout the lifetime of the authorised development and for as long as any part of the authorised development remains in situ; and
- (iii) in the event of an amendment(s) being made to the authorised development which gives rise to adverse impacts on the operation of Warton Aerodrome which are different and/or additional to those identified by the environmental statement, to work with the CAA and the Operator in good faith to implement and to thereafter maintain (throughout the lifetime of the authorised development and for as long as any part of the authorised development remains in situ) any additional mitigation measures required to prevent and remove the aforesaid different and/or additional adverse impacts.