SHEPHERD+WEDDERBURN

RESPONSES TO DEADLINE 3 SUBMISSIONS ON BEHALF OF

(1) BARROW OFFSHORE WIND LIMITED (REF: 20049974) (2) BURBO EXTENSION LTD (REF: 20049975) (3) WALNEY EXTENSION LIMITED (REF: 20049977) (4) MORECAMBE WIND LIMITED (REF: 20049973) (5) WALNEY (UK) OFFSHORE WINDFARMS LIMITED (REF: 20049978) (6) ØRSTED BURBO (UK) LIMITED (REF: 20049976) (THE "ØRSTED IPs")

IN CONNECTION WITH THE Application by Morecambe Offshore Wind Limited for an Order Granting Development Consent for the Morecambe Offshore Wind Farm

1. Introduction

1.1 This submission is provided in accordance with Deadline 4 of the examination timetable for the application by Morecambe Offshore Windfarm Limited (the "**Applicant**") for an Order under the Planning Act 2008 (the "**Act**") granting Development Consent for the Morecambe Offshore Windfarm Generation Assets (the **"Project**").

1.2 We represent six owners of operational offshore windfarms in the East Irish Sea (as set out relevant representations RR-008, RR-014, RR-056, RR-088, RR-089, RR-093), who we refer to together as the "**Ørsted IPs**" for the purposes of this submission.

1.3 This document contains the Ørsted IPs' responses to:

1.3.1 the Applicant's comments on their deadline 2 submissions [REP3-069]; and

1.3.2 the Applicant's responses to the first written questions of the examining authority ("**ExQ1**") [REP3-068].

2. Responses to comments on deadline 2 submissions [REP3-069]

2.1 In [REP3-069], the Applicant responded to the Ørsted IPs' submissions on two documents submitted by the Applicant regarding wake effects. Those documents are:

2.1.1 TCE Memorandum [REP1-092];

2.1.2 Frazer-Nash study [REP1-089].

2.2 The Applicant also briefly responded to the wake assessment report commissioned by the Ørsted IPs and submitted at deadline 2 [REP2-041].

2.3 The Ørsted IPs wish to respond briefly to key matters contained in the Applicant's submission.

Significance of wake effects

2.4 The Applicant has described the predicted wake effects of the Project on the Ørsted IPs assets as "*small*". The Ørsted IPs absolutely refute this statement. The wake losses predicted from the Project alone range up to 1.37%, which the Ørsted IPs consider is material.

2.5 More importantly, the cumulative effects of the Project, along with the proposed Morgan and Morecambe developments are up to 5.21%, and a total of 3.65%. As explained in the Ørsted IPs' deadline 3 submission [REP3-108], these cumulative effects are particularly significant and are likely to materially impact long-term decision making in respect of the assets.

2.6 The Ørsted IPs' ability to continue operating their developments beyond their 'earliest decommissioning date' is outlined in detail in response to action point 23 arising from ISH3, provided alongside this submission. Based on this information, it is entirely feasible that the lifetime of all of the assets could be extended considerably. Such extensions would benefit the UK grid by providing additional green electricity in a sustainable manner – an approach the Government has indicated support for in the Clean Power 2030 Action Plan (as described in [REP3-108]).

2.7 As outlined in REP3-108, the wake impact as a result of the Project would result in a material loss of output and income, and that would be material to the viability of the ongoing operation of the Orsted IPs' assets.

2.8 Ignoring the cumulative consequences of these developments, which are being consented concurrently and will be located in close proximity to each other, would undermine the planning policy framework. In particular, such an approach would not assess the realistic consequences of the development to and would not facilitate co-existence with existing development, as required by the NPS-EN3.

2.9 The Applicant has highlighted that in the Awel y Mor decision, the examining authority did not consider that the future viability of the Rhyl Flats Windfarm (the objector) would be impacted by the new development. As the Applicant has highlighted, the wake impact predicted was up to

2%. The Applicant's implication appears to be that any effect below 2% should therefore not be considered as potentially impacting the future viability of a development.

2.10 This is not correct. Importantly, in that examination, Rhyl Flats' case was not based on the future viability of its development being impacted by Awel y Mor. Therefore, decision makers were not asked to engage in detail on this issue. It is possible that the objector's approach was informed by the fact that its development was expected to cease operations within 5 years.

2.11 The Ørsted IPs have confirmed in express terms that in the context of its valuation the cumulative effects are of such a scale they would be material to any decision related to the continued operation of their assets. Ørsted has made these comments carefully. As an organisation with extensive experience in the offshore wind sector, Ørsted A/S is well placed to be making such assessments.

<u>The Crown Estate's buffer distance</u>

Wake effect working group

2.12 At REP2-040-02–REP2-040-04, the Applicant has responded to the Ørsted IPs submissions regarding whether the buffer distance established by the Crown Estate ("**TCE**") for the leasing process, can be relied on to address wake effects of offshore wind development.

2.13 The Applicant has flagged that in the Clean Power 2030 Action Plan, the UK Government has indicated that it will establish a working group on wake effects, "*to gather the data and build an evidence base, looking for comparison mitigations with international partners and other industries"*. This working group would work with stakeholders including the Crown Estate.

2.14 The Applicant appears to consider this supports its argument that compliance with TCE's buffer distances is sufficient to address the Project's wake effects.

2.15 The Ørsted IPs consider the passage highlighted by the Applicant emphasises the growing importance of wake effects in the industry and demonstrates that the UK Government recognises that wake effects must be managed.

2.16 It is unsurprising that TCE will be engaged with by a future working group, as a key stakeholder in the offshore wind industry. However, this does not in any way indicate that the buffer distances established by the Crown Estate in the leasing process are sufficient to manage wake effects, nor that they were intended to do so. We note there would be no need for a working group to undertake this work if the Government's view was that the buffer distances were sufficient.

2.17 In light of the clear Government recognition of the significance of wake effects and the need for these effects to be managed, it is surprising that the Applicant has been reluctant to engage with the Ørsted IPs on this issue. In the Clean Power 2030 Action Plan, it is recognised that wake effects have been dealt with outside of the planning system and that Awel y Mor set a "precedent" for addressing wake effects through a DCO requirement. These passages indicate that wake effects are an issue which has been addressed historically and will become increasingly important for future developments. Therefore, there is no basis for the Applicant to ignore the wake effects of the Project.

2.18 In light of these statements, it is clear the UK Government's expectation is for affected parties to work together to resolve effects and to ensure the best possible information on wake is available to decision makers.

'Close' under NPS-EN3

2.19 The Applicant has also stated that:

> "…*Given that impacts like wake diminish with distance, the Applicant considers that TCE's decision to set a buffer distance at 7.5km is helpful in determining what might be reasonably considered close enough to give rise to such impacts at a level where assessment would be proportionate*…"

2.20 This response suggests that the Applicant's position has changed, and it now agrees that understanding what is 'close' for the purposes of paragraph 2.8.197 NPS-EN3 depends on whether meaningful effects are likely to occur at that distance. In contrast, in its response to relevant representations, the Applicant's position was that assets beyond the 7.5km buffer zone were not 'close' for the purposes of this paragraph.

2.21 The Applicant has not provided a distance at which it considers a wake assessment would be required and 'proportionate'. However, the Applicant considers the 7.5km buffer distance is 'helpful' to understanding what this distance could be. It is not clear how the Applicant considers this determination should be made, if not by way of reference to likely effects.

2.22 As all parties are aware, if a developer wishes to construct an offshore wind development within the TCE buffer distance, it must obtain the permission of existing windfarms. Therefore, existing windfarms essentially have a veto power within the buffer (and as such, there would be no need for an assessment of wake effects).

2.23 Therefore, it appears that beyond the buffer distance, the Applicant agrees a wake assessment may be required under the NPS-EN3, based on what could '*reasonably be considered close enough*' to give rise to effects '*at a level where assessment would be proportionate'*. Given the Applicant's position remains that it is not required to assess the effects of the Project on the Ørsted IPs' assets, presumably the Applicant considers an assessment is only required somewhere between 7.5km and 12.9km (the distance between the Project and the closest of the Ørsted IPs' assets). The Ørsted IPs' do not consider this is reasonable, particularly in light of the level of effect indicated by the Wood Thilsted assessment [REP3-112]. We note the Applicant does not dispute the assessment provided by Wood Thilsted, and agreed at Issue Specific Hearing 3 on 5 February that Wood Thilsted used reasonable parameters in its assessment.

2.24 The Ørsted IPs reiterate their view that distance alone is a poor indicator of likely wake effects. As demonstrated by the research submitted at deadline 1, a number of other factors are highly important, in particular the direction of prevailing wind resource. Therefore, the Ørsted IPs consider that whether a wake assessment is required by paragraph 2.8.197 of the NPS-EN3 will depend on whether, in the precise circumstances of the application, effects are likely to occur.

2.25 Irrespective of the above, given an independent assessment predicts material wake effects from the Project at the Ørsted IPs' assets, it is clear that paragraph 2.8.197 is engaged by the Project. There is no need to speculate as to what distance could 'reasonably be considered close enough' to give rise to material effects. That being the case, the Applicant is required to demonstrate it has avoided/minimised disruption and economic loss to the Orsted IPs and to engage with the Orsted IPs to ensure coexistence is possible.

3. Comments on Applicant's response to ExQ1

Response to 1OOI1

3.1 The Ørsted IPs' note the Applicant's response to 1OOI1, that the Applicant is not concerned regarding wake effects arising from the Mona Offshore Wind Project. The Ørsted IPs' are not aware of the contractual obligations on the Applicant, however, the examining authority may wish to seek confirmation from TCE on the extent to which round 4 projects are permitted to make adverse representation in respect of other round 4 projects. It is assumed the Applicant is not able to confirm or deny publicly on this matter.

Response to 1OOI5

3.2 The Orsted IPs note the Applicant's response to question 1OOI5 regarding the possibility of an Awel y Mor type condition to address wake, states that it is not aware of "*design changes which can be made to materially influence wake at the distances at issue"*.

3.3 The Orsted IPs note this position does not align with the Applicant's comments on the Wake Assessment provided by the Orsted IPs - that "*where the purported impacts are small to begin with, small changes due to layout could fundamentally improve those impacts".* The Orsted IPs consider the Applicant is required, at the very least, to attempt to mitigate the wake effects of the Project.

1GEN10

3.4 In response to 1GEN10, the Applicant has outlined the basis on which it considers Barrow Offshore Windfarm cannot operate beyond 2030 without new consents.

3.5 As outlined in the Orsted IPs' own response to 1GEN10, Barrow Offshore Windfarm operates under a section 36 consent, which does not contain an 'expiry' date nor a condition requiring decommissioning by a set date. Ørsted has received confirmation from the Secretary of State that this development does not require any variations or further consents to continue operating

beyond 2030 [REP-110]. Therefore, Barrow Offshore Windfarm should be included in the Applicant's cumulative effects assessment.

3.6 It is acknowledged that Barrow Offshore Windfarm has two marine licences authorising maintenance activities for the wind farm and inter-array cables, which are due to expire in 2026. It is acknowledged that further maintenance will be required beyond 2026. As such, Orsted will look to vary its existing marine licences closer to the time of expiry. This issue is dealt with in more detail in the Orsted IPs' response to action point 23 arising from ISH3, however it is noted that any need to obtain or vary a marine licence is considered business-as-usual.

3.7 What is important for the purposes of the cumulative effects assessment is that the windfarm does not require further consents in order to legally operate and it is feasible (in terms of the physical condition of the windfarm) for it to continue to operate.

1CCR

3.8 The Ørsted IPs acknowledge the Applicant has undertaken to update its GHG assessment to reflect the loss of renewable energy generation at the Ørsted IPs assets as a result of the Project.

3.9 As outlined at ISH3, in order for the assessment to be accurate, it should reflect the loss of renewable generation that would result from the Ørsted IPs not pursuing lifetime extension of these assets. In other words, total loss of generation from the assets at the 'earliest possible decommissioning date' as set out in the Ørsted IPs responses to ExQ1 [REP3-109]. As outlined in their deadline 3 submission, extending the lifetime of the Ørsted IPs' existing projects would benefit the UK grid by providing additional green electricity in a sustainable manner. Alongside this submission, the Ørsted IPs' have submitted a response to an action point arising from ISH3, which outlines why continued operations beyond the initial 25-year timeframe are feasible (both from an engineering and consenting perspective).

3.10 Decisions regarding lifetime extensions will hinge on the financial viability of the projects beyond their expected earliest decommissioning date. A material increase of wake impact as a result of the Project could be sufficient to make operations uneconomic. This is a particular concern as the assets age – post 25 years, the economic margins for the assets become narrower.

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