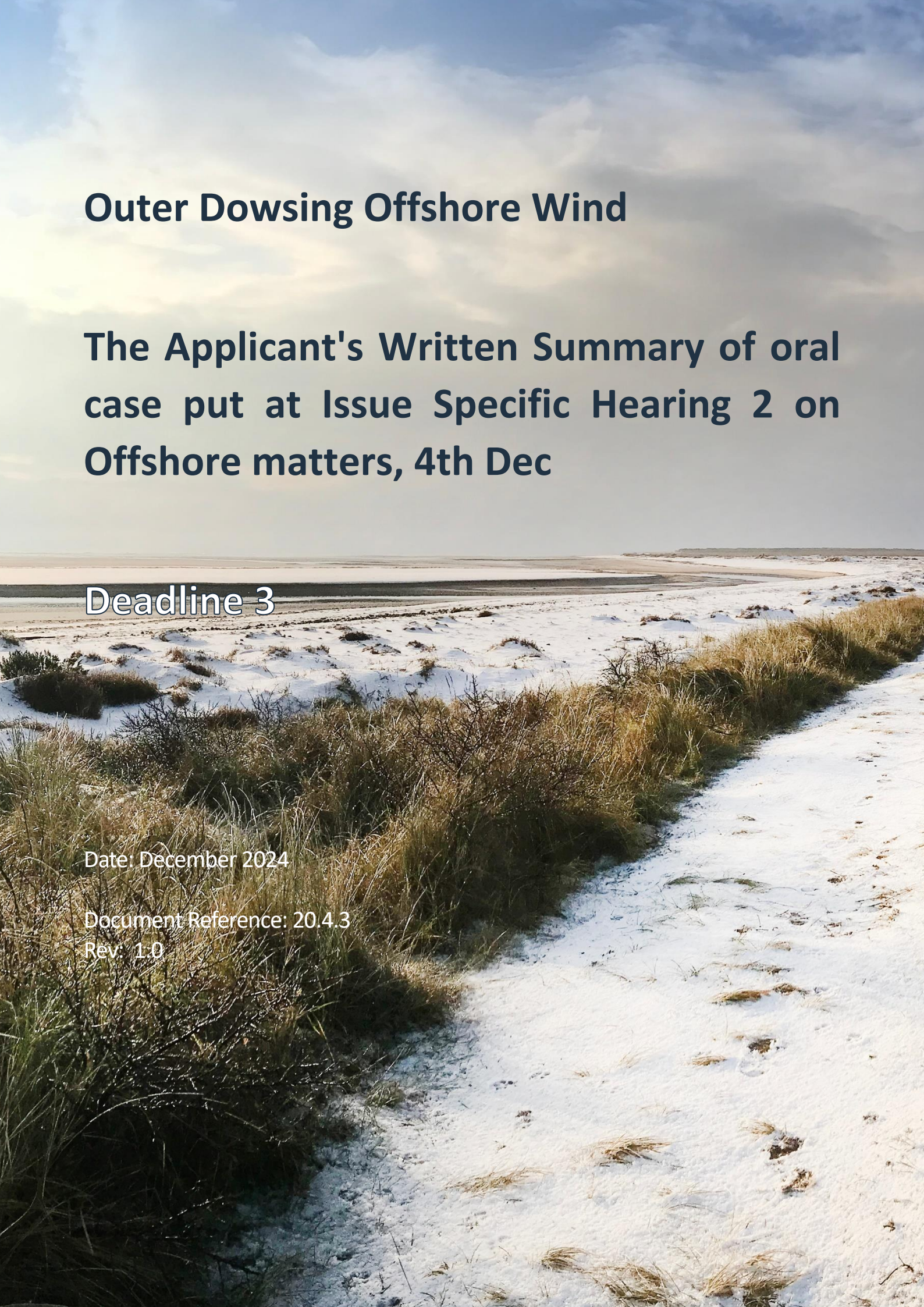

Outer Dowsing Offshore Wind

The Applicant's Written Summary of oral case put at Issue Specific Hearing 2 on Offshore matters, 4th Dec

Deadline 3

Date: December 2024

Document Reference: 20.4.3

Rev: 1.0

Company:	**Outer Dowsing Offshore Wind**			Asset:	**Whole Asset**	
Project:	**Whole Wind Farm**			Sub Project/Package:	Whole Asset	
Document Title or Description:	The Applicant's Written Summary of Oral Case Put at the Issue Specific Hearing 2 held on 4 December 2024					
Internal Document Number:	PP1-ODOW-DEV-CS-REP-0250			3rd Party Doc No (If applicable):	N/A	
Rev No.	**Date**	**Status / Reason for Issue**	**Author**	**Checked by**	**Reviewed by**	**Approved by**
1.0	December 2024	Deadline 3	Shepherd & Wedderburn	Outer Dowsing	Shepherd & Wedderburn	Outer Dowsing

Table of Tables

Acronyms & Definitions

Abbreviations / Acronyms

Abbreviation / Acronym	Description
BMV	Best and Most Versatile
DCO	Development Consent Order
ECC	Export Cable Corridor
EIA	Environmental Impact Assessment
ES	Environmental Statement
HND	Holistic Design Network
IAQM	Institute of Air Quality Management
NESO	National Energy Systems Operator
NGSS	National Grid Substation
oCoCP	Code of Construction Practice
OFH	Open Floor Hearing
OnSS	Onshore Substation
OTNR	Offshore Transmission Network Review
SMP	Soil Management Plan

Terminology

Term	Definition
The Applicant	GT R4 Ltd. The Applicant making the application for a DCO. The Applicant is GT R4 Limited (a joint venture between Corio Generation (and its affiliates), Total Energies and Gulf Energy Development (GULF)), trading as Outer Dowsing Offshore Wind. The Project is being developed by Corio Generation, TotalEnergies and GULF.
Cumulative impact	Impacts that result from changes caused by other past, present or reasonably foreseeable actions together with the Project.
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for a Nationally Significant Infrastructure Project (NSIP).
Effect	Term used to express the consequence of an impact. The significance of an effect is determined by correlating the magnitude of the impact with the sensitivity of the receptor, in accordance with defined significance criteria.
Environmental Impact Assessment (EIA)	A statutory process by which certain planned projects must be assessed before a formal decision to proceed can be made. It involves the collection and consideration of environmental information, which fulfils the assessment requirements of the EIA Regulations, including the publication of an Environmental Statement (ES).
Environmental Statement (ES)	The suite of documents that detail the processes and results of the EIA.
Export cables	High voltage cables which transmit power from the Offshore Substations (OSS) to the Onshore Substation (OnSS) via an Offshore Reactive Compensation Platform

Term	Definition
	(ORCP) if required, which may include one or more auxiliary cables (normally fibre optic cables).
High Voltage Alternating Current (HVAC)	High voltage alternating current is the bulk transmission of electricity by alternating current (AC), whereby the flow of electric charge periodically reverses direction.
Impact	An impact to the receiving environment is defined as any change to its baseline condition, either adverse or beneficial.
Landfall	The location at the land-sea interface where the offshore export cables and fibre optic cables will come ashore.
Link boxes	Underground metal chamber placed within a plastic and/or concrete pit where the metal sheaths between adjacent export cable sections are connected and earthed.
Mitigation	Mitigation measures are commitments made by the Project to reduce and/or eliminate the potential for significant effects to arise as a result of the Project. Mitigation measures can be embedded (part of the project design) or secondarily added to reduce impacts in the case of potentially significant effects.
National Grid Onshore Substation (NGSS)	The National Grid substation and associated enabling works to be developed by the National Grid Electricity Transmission (NGET) into which the Project's 400kV Cables would connect.
Onshore Export Cable Corridor (ECC)	The Onshore Export Cable Corridor (Onshore ECC) is the area within which, the export cables running from the landfall to the onshore substation will be situated.
Onshore substation (OnSS)	The Project's onshore HVAC substation, containing electrical equipment, control buildings, lightning protection masts, communications masts, access, fencing and other associated equipment, structures or buildings; to enable connection to the National Grid
Outer Dowsing Offshore Wind (ODOW)	The Project.
Order Limits	The area subject to the application for development consent, The limits shown on the works plans within which the Project may be carried out.
The Planning Inspectorate	The agency responsible for operating the planning process for Nationally Significant Infrastructure Projects (NSIPs).
Pre-construction and post-construction	The phases of the Project before and after construction takes place.
The Project	Outer Dowsing Offshore Wind, an offshore wind generating station together with associated onshore and offshore infrastructure.
Project design envelope	A description of the range of possible elements that make up the Project's design options under consideration, as set out in detail in the project description. This envelope is used to define the Project for Environmental Impact Assessment (EIA) purposes when the exact engineering parameters are not yet known. This is also often referred to as the "Rochdale Envelope" approach.

1 Introduction

1. This document is provided in line with the Examining Authority's (ExA's) Rule 8 letter [PD1-011] request for submission of *"written summaries of oral case put at any of the hearings during the w/c 2 December 2024".*
2. Issue Specific Hearing 2 (ISH2) for the Outer Dowsing Offshore Wind Farm took place on 4 December 2024 at 2pm and was held virtually, with attendees attending via Microsoft Teams.
3. ISH2 broadly followed the agenda published by the Examining Authority (the ExA) on 26 November (EV6-001).

2 Written Summary of Oral Case Put at the Issue Specific Hearing 2

Table 0.11: Written Summary of the Applicant's Oral Case at ISH2

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
3.1 Welcome and Introductions		
3.1	The Examining Authority ("**ExA**") opened the hearing, introduced themselves and invited parties present to introduce themselves.	Hereward Phillpot KC ("**HPKC**") stated that he appeared on behalf of the Applicant and that he would introduce others appearing on behalf of the Applicant when required. He introduced contributors to his immediate left and right: Mr Chris Jenner, the Applicant's Development Manager and Ms Emma Reed, Director at Shepherd and Wedderburn.
3.2 Oil, Gas and Other Offshore Infrastructure		
3.2 Consideration of potential wake effects and implications for energy yield at other offshore windfarms	The ExA asked the Applicant to set out its position on wake effects, specifically to elaborate on its response to the Examination Authority' First Written Questions ("**ExQ1**") OG 1.2 (REP2-051).	HPKC set out the following background, high-level summary of the Applicant's position, and its current consideration in other offshore wind farm ("**OWF**") DCOs. **Background** a. The Applicant has set out in its response to OG 1.2 why it does not consider a specific wake assessment necessary or appropriate and has addressed the implications for decision-making including in relation to the wake loss requirement within the Awel y Môr ("**AyM**") DCO. b. The Applicant has recently seen the Ørsted IP's[1] Deadline 2 submission (REP2-076) which includes a significant amount of technical material

[1] This is the collective name provided by the representative of the following Interested Parties which are ultimately owned by Ørsted as set out in its response to ExQ1 (REP2-076): *"Hornsea 1 Limited, the collective of Breesea Limited, Soundmark Wind Limited, Sonningmay Limited and Optimus Wind Limited […], 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")"*

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
		which the Applicant is in the process of considering, but is not yet in a position to set out a full and detailed response to Ørsted IP submissions and will do so in due course. c. The Applicant has approached Ørsted IPs to open a dialogue and we have now had a response and are seeking to schedule a meeting. **Summary** Against this background, HPKC summarised the Applicant's main points articulated in its written response to ExQ1: a. When the twin factors of distance between arrays and The Crown Estate ("**TCE**") Yield Study (REP2-056) of impact over distance are taken into account, the Applicant's view is that no further assessment is required by reference to the National Policy Statements or Environmental Impact Assessment principles: the evidence shows that no Likely Significant Effect is likely to occur so it is, first, reasonable to scope out at assessment and it is, second, unnecessary and disproportionate for the Applicant to go beyond what has been done and undertake further assessment. The conclusion is the same with or without the Offshore Restricted Build Area ("**ORBA**") but its introduction further increases the distance between arrays and consequentially any wake loss. b. The Applicant has considered the AyM decision and identified appropriate reasons, first, to distinguish between that case and the Applicant's but also, in any event, second, not to regard that decision as a good precedent to follow. This is for the following reasons: i. in the AyM DCO case, the two OWFs were far closer together than here (5.1 km)

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
		ii. in the AyM DCO case, the anticipated wake loss for the nearby Rhyl Flats Windfarm was assessed at 2% whereas the TCE Energy Yield study suggests a range of 2% - circa 0.5% which is consistent with the analysis done in AyM. We would expect any wake loss between the Applicant's proposed OWF and the Orsted IPs OWF to be below the lower end of that range given the distance of beyond 20km iii. In terms of decision-making, the consideration of the issue by the ExA in AyM led to the imposition of a Requirement but neither the Examining Authority's Report nor the Secretary of State's Decision Letter properly considered whether the Requirement satisfies the tests for Requirements, which include (a) necessity (b) precision (c) overall reasonableness, including avoiding imposing requirements that are disproportionately burdensome. When those issues are considered, it is clear that it would be unnecessary, unreasonable and inappropriate to impose a requirement here. c. Even on a pessimistic view would reach the conclusion that Wake Loss effects are likely to be limited so it is plain that any loss would not outweigh the very substantial public benefits associated with the proposed OWF or undermine the viability of other OWFs. In those circumstances any limited wake loss that did occur would not lead overall conflict with the National Policy Statement; nor materially affect the balance that the Secretary of State must strike when deciding whether the exception in Section 104(7) of the Planning Act 2008 is engaged. In short, there is no potential for an effect which would conceivably displace the policy and statutory presumption in favour of development consent here.

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
		d. there are other legal questions raised in the Applicant's response as to whether this situation falls within the ambit of the policy or whether it falls within "other offshore industries" (page 146 of REP2-051). **Consideration in other OWF DCOs** HPKC noted that the legal issues identified in the Applicant's response are going to come before the SoS for determination through the Examination of the Mona and Morgan OWF DCOs, either or both of which will likely come before the SoS and be decided before the Applicant's DCO. The Applicant does not at this stage have anything material to add to the arguments advanced by the applicants in Mona and Morgan. As a result, either the SoS will decide for the Applicants in those cases in which case the issues would fall away or the SoS will decide against the Applicants in which case, attention can turn to the case specific matters on which the Applicant has focussed in response to the ExA's ExQ1. HPKC respectfully suggested that in those circumstances time and effort should not be spent inquiring into these legal points within this Examination and rather the parties should be invited to make written submissions in due course on the implications for the ExA's recommendation and SoS decision in this case, depending on the outcome of those debates.
3.2 Consideration of potential wake effects	The ExA asked what the proposals for the meeting with the Orsted IPs would be	HPKC explained that it's too early for an agenda to have been set for meetings that are yet to be arranged but, among other things, there are a range of technical matters which the OWFs will wish to discuss.

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
and implications for energy yield at other offshore windfarms		
3.2 Consideration of potential wake effects and implications for energy yield at other offshore windfarms	The ExA asked the Orsted IPs to respond. The Orsted IPs set out that it welcomed the Applicant's approach regarding a meeting and that it makes sense to hold the meeting before responding to the Applicant's position The ExA raised Orsted IP's response to OG 1.2 and its references to the potential implications of wake loss for the Applicant's climate change benefits. The Applicant was asked to confirm whether its existing assessment has considered wake effects.	HPKC confirmed that the Applicant's assessment of climate change does not include an assessment of wake loss but set out the following caveats: a. The Applicant's view is that any wake loss is likely to be very low so not material for the purpose of assessment; b. One of the difficulties which arises from the AyM Requirement approach which looks to the developer of the new OWF to design to minimise wake loss at a neighbouring windfarm is that if you constrain the development of the new OWF you negatively affect the capacity of the new OWF in a way which may well be greater than the saving at the existing OWF to a significant extent. That relationship that must be borne in mind. The overall capacity of the two OWFs may be greater if you let the new OWF have its maximal capacity.
3.2 Consideration of potential wake effects and implications for energy yield at other offshore windfarms	The ExA asked for a technical note to be set out on the subject.	The Applicant agreed to provide this at Deadline 4. HPKC set out the following point for the ExA's assistance in reading into the issue to give the essence of the technical issue which will be set out in a note: a. page 7 of the TCE Yield Study (REP2-056) explains how the buffer distance issue has been assessed; b. page 18 explains the relationship between increasing the buffer distance and the impact on the capacity of two theoretical OWFs that were modelled.

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
		These points provide the essential technical issue and see also the Applicant's D2 response to question OG1.2 [REP2-051] at p. 146. In due course Applicant will expand on that to set out how it should be considered.
3.2 Consideration of potential wake effects and implications for energy yield at other offshore windfarms	The ExA enquired about other closer OWFs and stated that these ought not to be ignored in the Applicant's consideration	HPKC confirmed that other OWFs would not be ignored and that the Applicant would provide the respective distances at Deadline 3. However, HPKC noted that those OWFs had not raised any issues with wake loss at their windfarms and, more generally, should you seek to constrain the Applicant's array on all sides, the effect discussed in terms of losing the benefits of the new OWF would increase, a matter we would tackle in the written submissions to follow. Regarding the distance between the Applicant and other OWFs which has been reviewed after the Hearing, the distance between the Applicant's OWF array area and Triton Knoll Offshore Wind Farm is 8.5km. The distance between the Applicant's OWF array and the proposed Dudgeon Extension Offshore Wind Farm is 13.5km. This is set out in Table 18.4 of Environmental Statement Chapter 18 Marine Infrastructure and Other Users (APP-073). This is shown in Figure 18.2 in Environmental Statement Volume 3 Chapter 18 Marine Infrastructure and Other Users (APP-108).
3.2 Updates on cooperation and agreements, including helicopter access.	The ExA noted ExQ1 OG 1.8 and 1.9 and noted that the ORBA appeared to have been made possible because of access arrangements to the Malory platform being agreed in principle with Perenco. The ExA asked whether there were any implications for the ORBA should agreement with Perenco not be reached	Chris Jenner set out on behalf of the Applicant that it had been engaged in years' of discussion with Perenco and had sufficient confidence to make the ORBA reductions and that any outstanding points between the Applicant and Perenco do not create any risk for the ORBA. After further clarifying questions from the ExA Chris Jenner confirmed that the verbal agreement with Perenco to date means that the ExA was correct to say that the ORBA could co-exist with or without agreement with Perenco

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
3.2 Updates on cooperation and agreements, including helicopter access.	The ExA asked about the Maritime and Coastguard Agency's response to OG 1.7 on helicopter access reports which query assumptions and headline conclusions regarding whether search and rescue aircraft may be able to provide support in certain conditions (poor weather or overnight) and whether commercial air traffic ("**CAT**") helicopter availability may be more of a logistical issue than implied.	Ali McDonald Marine Risk Expert, Anatec Limited, set out on behalf of the Applicant that: a. the Mallory platform is inside the windfarm and CAT operations will only occur under appropriate visual and meteorological conditions. b. Regarding search and rescue, the platform is normally unattended and manning in extreme weather conditions would not be expected; c. The position for the Applicant will be similar to that of current OWF which have platforms within their array which are accessed by search and rescue helicopters; d. In any case, Coastguard-operated search and rescue is necessary as the availability of CAT helicopters is constrained and not guaranteed. Mark Prior Aviation, Aviation Specialist, Anatec, set out that it is usual for search and rescue to become involved because CAT aircraft cannot fly impaired people and therefore uncommon for CAT to fly injured persons which is a task for the MCA. Further, the expectation is that Mallory platform would only be manned in daytime during good weather so access by search and rescue should not be an issue and the MCA has acknowledged in its submissions that this is not typically an issue for a Normally Unmanned Installations such as in this circumstance.
3.2 Updates on cooperation and agreements, including helicopter access.	The ExA asked the MCA for its response, which it gave. The ExA asked whether any further remedy or action was needed, to which the MCA stated that there was not.	

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
3.2 Updates on cooperation and agreements, including helicopter access.	The ExA referred to the Orsted IP's response to OG 1.5 and asked whether they may be provided with a mechanism to ensure that they are directly consulted in respect of any operational procedures in relation to construction and operation traffic to and from the Applicant's OWFs	HPKC stated that his instructions are that this would be something to add to the agenda for the upcoming discussions with Orsted IPs.
3.2 Updates on cooperation and agreements, including helicopter access.	The Orsted IPs stated that they agreed and noted that they had received crossing / proximity agreements from the Applicant in relation to one of the Orsted IP OWFs (Lincs Wind Farm) and that that OWF would respond by the end of the Examination, and they understood the drafting could be replicated for another Orsted IP OWF (Race Bank). The Orsted IPs set out that, pending a review of this content, they may seek Protective Provisions ("**PPs**") and if these end up being requested then will seek engagement as soon as possible. Their focus is on the Lincs and Race Bank Wind Farm but that may be needed on other Orsted IPs, and this would be confirmed as soon as possible within the Examination.	

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
	The Orsted IP's finally set out that the Outline Cable Specification Plan and Outline Vessel Management Plan are documents which the above Orsted IPs wish to be consulted upon.	
3.3 Civil and Military Aviation and Communication		
3.3 Mitigation for Primary Surveillance Radar (PSR) Neatishead and Staxton Wold (Air Defence) and Cromer and Claxby (NATS en Route)	The ExA referred the Ministry of Defence Defence Infrastructure Organisation submissions (REP2-072) regarding next generation primary surveillance radars not being implemented before the operational period of the project commences and the Applicant's position on the delivery of industry standard radar mitigation. The ExA asked the Applicant provide brief update for timescales on the Radar Air Defence Taskforce	Chris Jenner on behalf of the Applicant noted that these discussions were subject to Non-Disclosure Agreements so there would be limited amounts which could be said. Mr Jenner set out that the Applicant has been a member of this task force for a number of years and that the Applicant plans to negotiate a radar mitigation scheme agreement through the Task Force. The Applicant has assurances from government for funding of the technical solution by 2030 so that the measures put in place will be delivered in time before the Project is operational
3.3 Mitigation for Primary Surveillance Radar (PSR) Neatishead and Staxton Wold (Air Defence) and Cromer and	The ExA noted that would address the question of a Ministry of Defence Requirement at Deadline 4, and whether that would mirror Requirement 32 stipulation that the drafting would prevent any Wind Turbine Generator rotation prior to discharge to deal with DIO's specific concern about the effect of rotation.	The Applicant stated that the specific form of any Requirement would be discussed with MOD and that the Applicant would intend to have an agreed form of words added into the dDCO or a form of words which takes their input on board.

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
Claxby (NATS en Route)		
3.3 Mitigation for Primary Surveillance Radar (PSR) Neatishead and Staxton Wold (Air Defence) and Cromer and Claxby (NATS en Route)	The ExA turned to the Cromer and Claxby PSR mitigation discussed and referred to the fact that the relevant Statement of Common Ground refers to NATS en Route plc having sign off for the Transponder Mandatory Zone but that MOD liaison may also be required. The ExA asked whether the Applicant to set out its position on this.	Chris Jenner explained that the Applicant is seeking MOD engagement on interface between civil and miliary radar and would seek to include any requirements or provisions that are necessary so that the project can be operational but that the discussions with MOD had not progressed this far at this point but would be discussed in due course and that the Applicant has requested to discuss both civil and military radar systems with the MOD.
3.3 Mitigation for Primary Surveillance Radar (PSR) Neatishead and Staxton Wold (Air Defence) and Cromer and Claxby (NATS en Route)	The ExA enquired about whether there was discussion with NATs regarding Requirement 32.	HPKC confirmed – on the basis of his instructions – that that was correct.
3.4 Offshore Restricted Build Area document management		
3.4 Offshore Restricted Build Area document management	The ExA asked the Applicant how it intended to respond to the below document control issue: a. The now-accepted ORBA change request alters mortality for a range	Ms Emma Reid on behalf of the Applicant set out that it is grateful that the ExA has picked up those points and, as a matter of clarification, set out the reference to "no change" was perhaps an over-summary, being a summary of

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
	of species but documents submitted with it also took the opportunity to present figures which incorporated JNCC guidance from August 2024, the result of which is that the predicted mortality figures are different, with ES and HRA implications. b. Table 3 of Change Request (27 November) lists documents which have changed as a result of the ORBA change c. The ExA is aware that some submission since (for instance the Deadline 2 submission Rep2-025) now do cite the mortality figures that take into account the ORBA but there appear to be a number of documents listed as "no change" which would still require updating to take into account the new mortality figures. d. One example would be PD1-091 where, in table 2.10, the annual guillemot mortalities would reduce. e. The earlier (pre-ORBA) figure using the preferred methodology is still	whether conclusion of the impact assessment (rather than content) has changed. The Applicant would adopt the following approach which it hopes would address the point made: a. update its in-combination assessments at Deadline 4 for HRA purposes; and b. Update its cumulative assessments at Deadline 5 for EIA purposes. Both updates would also incorporate any clarifications to the assessment chapters which are required due to the introduction of the ORBA.

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
	cited in a number of documents (for instance in table 3.9 of derogation case) f. Overall, there are a range of figures that potentially require to be updated.	
3.4 Offshore Restricted Build Area document management	The ExA thanked the Applicant for its response and reiterated that it understood that it was mainly individual figures which had changed but that this would be pertinent for the update of the Report into the Implications for European Sites (RIES) and the need to ensure the REIS includes the correct figures and they can be tracked through. The ExA further set out that where updated documents provide figures in a slightly different manner (the ExA cited the difference between figures used in 1.12-13 of APP1-064 vs figures in 2.17 – 2.22 of Appendix F of PD1-088) an explanation in updated documents of how we have updated any such numbers would be of use.	HPKC acknowledged the ExA's point and noted that it had been well understood and taken onboard by the Applicant, and that it would be borne in mind to ensure documents are as user friendly as possible.
3.5 Actions arising from the Issue Specific Hearing		

Agenda Item	ExA Question/Other Parties' Submission	Applicant's Response
3.5	The ExA set out the following actions which were then discussed where necessary and have since been provided by the ExA in EV7-010.	The Applicant's responses to each action requested at Deadline 3 have been provided as signposted in the Applicant's Deadline 3 Cover Letter (Document 20.1)
3.6 Any other matters arising.		
3.6	The ExA highlighted the three Finch rulings which relate to establishing the procedure for considering the indirect effect of downstream greenhouse gas emissions ("**GHG**") and sought the Applicant's view on their implication on the Applicant's assessment of GHG, specifically whether the Applicant could explain the implications for this examination; and whether the Applicant had carried out adequate assessment in light of the Finch rulings, specifically regarding the downstream GHG	The Applicant agreed to provide its response in writing which is appended to this Hearing Summary in Appendix 1.
4. Next Steps, including any Action Points		
4	The ExA requested written summaries of hearing contributions	The Applicant provides its summary in this document.
5. Closing		
5	The ExA confirmed the cancellation of ISH4 and closed the meeting.	

3 Action Points

Action No	Description	Applicant's comment/where has the action been answered
1	Applicant and Orsted Interested Parties (IPs)to provide a written note on the question of wake effects which includes a summary of further discussions relating to wake loss(discussion to also include the provision of a mechanism to ensure consultation in respect of operational and construction traffic to and from Orsted IPs developments). **(D4)**	This information will be provided in due course as requested.
2	Provide a technical note which summarises the Applicant's assessment of how wake loss effects for offshore wind farms, including Triton Knoll and the Dudgeon Extension Project should be taken into account for the Proposed Development. **(D4)**	This information will be provided in due course as requested.
3	Applicant to respond in writing with figures that confirm the array area separation distances between the Proposed Development and Triton Knoll, and also Dudgeon extension array areas. **(D3)**	This information is set out within this hearing summary above.
4	Habitats Regulations Assessment and compensation documents to be updated to reflect the changes to figures as a result of the offshore restricted build area introduction and to ensure consistency of presentation for any updated figures with explanations where necessary. **(D4)**	This information will be provided in due course as requested.
5	Explain the implications of recent Finch rulings on the assessment of greenhouse gases (GHG) emissions for this examination, Secondly, whether the Applicant has carried out the adequate assessment as per the Finch rulings, specifically regarding downstream GHG emissions. **(D3)**	The Applicant's position on these questions is set out within this hearing summary (within Appendix 1 below).
2	Provide a technical note which summarises the Applicant's assessment of how wake loss effects for offshore wind farms, including Triton Knoll and the Dudgeon Extension Project should be taken into account for the Proposed Development. **(D4)**	This information will be provided in due course as requested.

4 Appendix 1:

4.1 Background

At Issue Specific Hearing 2 ("ISH2") relating to offshore environmental matters, the ExA requested that the Applicant explain:

(i) the implications of recent Finch rulings on the assessment of GHG emissions for this examination; and

(ii) whether the Applicant has carried out the adequate assessment as per the Finch rulings, specifically regarding downstream GHG emissions.

4.2 The implications of the Finch rulings on the assessment of GHGs for this examination

Background and the nature of the Project

1.2 The ExA's reference to the *Finch* rulings relates to the Supreme Court judgment in *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20 (the *Finch* Case) and the subsequent decision in *Friends of the Earth Limited v Secretary of State for Levelling Up, Housing and Communities, West Cumbria Mining Limited, Cumbria County Council* [2024] EWHC 2349 (Admin) (the *Whitehaven* Case).

1.3 The *Finch* Case concerned a legal challenge to the grant of planning permission for a project to extract oil for commercial purposes at a well site in Surrey. The *Whitehaven* Case concerned a legal challenge to the grant of planning permission for the mining and processing of coal, ultimately to be blended with coals from other sources to produce coke, an essential ingredient in the production of steel in a blast furnace.

1.4 In both cases, the environmental information before the decision-maker assessed the likely significant effects of the extraction of the oil/coal on greenhouse gas emissions and climate but did not assess the effects of the combustion of the oil/coal. The court held in each case that the environmental information ought to have included an assessment of the downstream emissions arising from the combustion of the oil/coal.

1.5 Both cases were concerned with applications for planning permission for the extraction of fossil fuels. Fossil fuels give rise to GHG emissions on their use once extracted, generally through combustion.

1.6 By contrast, the Application for the Outer Dowsing Offshore Wind Farm is an application for an offshore wind development, a form of renewable energy. National Policy Statement (NPS) EN-1 recognises, at paragraphs 4.2.4 and 4.2.5, that offshore wind is a form of low

carbon infrastructure and that there is a critical national priority for the provision of nationally significant low carbon infrastructure. Similarly NPS EN-3, paragraph 2.8.1 notes that offshore wind "*will play a significant role in decarbonising the energy system*".

1.7 The particular climate benefits of the Project have been assessed in Chapter 31, Climate Change (APP-086). The scope of that assessment considered impacts across the whole project lifecycle, from the production of the raw materials used to construct the facility through to the recycling or disposal of those same materials after decommissioning at the end of the Project's lifetime. That assessment concluded that "[w]*hen compared with the alternative of generating the electricity by gas combined cycle gas turbine (CCGT) (with a carbon intensity of 371g CO2eq/kWh) or "all non-renewables" (424g CO2eq/kWh), the Project will pay back the embedded emissions in its construction in about two to three years*." (paragraph 67, Chapter 31, Climate Change (APP-086)).

1.8 From the outset, there is therefore a fundamental distinction to be drawn between the nature of the developments concerned in *Finch* and *Whitehaven*, being developments which have as an inevitable consequence GHG emissions arising from the downstream combustion of fossil fuels, and the Project, which creates renewable electricity which is exported to the National Grid for offtakers to use.

The issues in the Finch Case and the Whitehaven Case

1.9 The core obligation under the EIA Regulations[2] with which each court was concerned in the respective cases is the requirement to carry out an assessment of the likely significant effects of the proposed development on the environment, including on climate, before a decision is made on whether to grant development consent. "Effects" in terms of the EIA Regulations has a broad meaning and encompasses direct, indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of a project.

1.10 The fundamental question which the courts were required to answer in the *Finch* Case and the *Whitehaven* Case was "are the greenhouse gas ("**GHG**") emissions which arise from the combustion of extracted oil/coal from the proposed development an effect of the project within the meaning of the EIA Regulations?"

1.11 In coming to a conclusion on this overarching question, the court in *Finch* explored the following component aspects:

(i) causation; and

(ii) level of evidence and methodology for assessment.

[2] The relevant set of EIA regulations for the *Finch* case was the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, which are similar in all material respects to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 applying to the Application.

1.12 The *Finch* case can be distinguished from the Application on each of the above component aspects.

Causation

1.13 To establish whether something is the "effect of a project" requires consideration of causation. In *Finch*, the court's detailed consideration of causation resulted in two key conclusions.

1.14 Firstly, whether a state of affairs is the effect of another is initially a question of fact applying scientific knowledge. Lord Leggatt observed that there is overwhelming scientific proof that burning fossil fuels leads to climate change.[3]

1.15 The same cannot be said of the production of renewable electricity from offshore wind. Indeed, the opposite is true. Renewable energy developments such as offshore wind are key to combatting climate change.

1.16 Secondly, in *Finch*, the parties agreed that it was not merely likely but inevitable that the extraction of oil at the proposed well site would initiate a causal chain that would lead to the combustion of the oil, the release of GHGs into the atmosphere and climate change. Such inevitability does not arise should the DCO be granted.

1.17 There is currently no certainty around the end use of the electricity to be produced from the Project. Whilst it is theoretically possible that the renewable electricity generated by the Project is ultimately used to contribute to a GHG emitting purpose, such as the ignition of a boiler, this is clearly distinguishable from the *Finch* case where it was accepted by all parties that the hydrocarbons extracted from the development would inevitably be combusted in a manner which would result in GHG emissions and therefore climate change.

1.18 Lord Leggatt in *Finch* distinguished the effects of combustion of oil extracted from the proposed development from other types of downstream effects (emphasis added):

"Oil is a very different commodity from, say, iron or steel, which have many possible uses and can be incorporated into many different types of end product used for all sorts of different purposes. In the case of a facility to manufacture steel, it could reasonably be said that environmental effects of the use of products which the steel will be used to make are not effects of manufacturing the steel. That is because the manufacture of the steel is far from being sufficient to bring about those effects. ***Such effects will depend on innumerable decisions made "downstream" about how the steel is used and how products made from the steel are used****. This indeterminacy*

[3] At paragraph 66

regarding future use would also make it impossible to identify any such effects as "likely" or to make any meaningful assessment of them at the time of the decision whether to grant development consent for the construction and operation of the steel factory."[4]

1.19 The variety of different end uses to which the renewable electricity produced by the Project could be put and their resultant effects, as well as the fact that many of those uses will result in zero emissions, means that it should be distinguished from the downstream effects of oil or coal extraction in this way.

Level of evidence

1.20 The court in *Finch* also identified that for a result to be said to be an effect of a project requires a level of evidence on which to base such a determination. At paragraph 74, the judgment goes on to state:

"If evidence is lacking so that a possible future occurrence is a matter of speculation or conjecture, then a rational person would not feel able to judge that it is "likely". Such agnosticism is not the same as judging the event to be unlikely. It reflects a belief that there is too little knowledge on which to base a judgment… Thus, if there is insufficient evidence available to found a reasoned conclusion that a possible environmental effect is "likely", there is no requirement to identify, describe and try to assess this putative effect. This criterion must also govern, where a possible effect is regarded as "likely", the nature and extent of the assessment of the effect."

1.21 The need for a sufficient evidence base is derived from the obligation under the EIA Regulations for the decision-maker to reach a reasoned conclusion on the likely significant effects on the environment.

1.22 Whether and the extent to which any future downstream use of renewable electricity gives rise to GHG emissions is dependent on other factors entirely unconnected with the Project and cannot be measured with accuracy.

1.23 As a result, it would not be possible to assess the GHG emissions arising from hypothetical downstream use in a meaningful way which would allow a reasoned conclusion to be reached avoiding conjecture and speculation. As Lord Leggatt notes, "*Conjecture and speculation have no place in the EIA process*."[5]

Implications for this Examination

[4] At paragraph 121

[5] At paragraph 77

1.24 In light of the above, the ExA can be satisfied that the Project is clearly distinguishable from the facts in *Finch* and in *Whitehaven.* Hypothetical downstream emissions which tangentially arise from the existence of the Project do not need to be assessed in the same manner as the certain GHG emissions arising from combustion of oil or coal, as in *Finch* and *Whitehaven.*

4.3 The adequacy of the Applicant's assessment as per the Finch rulings, specifically regarding downstream GHG emissions

1.25 As noted above, the Applicant's climate assessment considered effects across the whole project lifecycle. Following *Finch*, in light of the indeterminacy as to whether and the extent to which GHG emissions would arise from any downstream use and the absence of evidence as to whether such an effect is likely, there is no requirement to assessment to assess downstream GHG emissions from the Project.

1.26 The Applicant's climate assessment is therefore adequate.