



SHEPHERD+ WEDDERBURN

RESPONSE TO COMMENTS ON WRITTEN REPRESENTATION ON  
BEHALF OF

(1) BARROW OFFSHORE WIND LIMITED (REF: 20049595) (2) BURBO  
EXTENSION LTD (REF: 20049590) (3) WALNEY EXTENSION LIMITED  
(REF: 20048542) (4) MORECAMBE WIND LIMITED (REF: 20049596) (5)  
WALNEY (UK) OFFSHORE WINDFARMS LIMITED (REF: 20049592) (6)  
ØRSTED BURBO (UK) LIMITED (REF: 20049589) (THE "ØRSTED IPs")

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

## Introduction

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- 1.1 This submission is provided in accordance with Deadline 3 of the examination timetable for the application by Morgan Offshore Wind Farm Limited (the “**Applicant**”) for an Order under the Planning Act 2008 (the “**Act**”) granting Development Consent for the Morgan Offshore Wind Farm (the “**Project**”).
- 1.2 We represent six owners of operational offshore windfarms in the East Irish Sea (as set out relevant representations RR-005, RR-007, RR-023, RR-032, RR-043, RR-044), who we refer to together as the “**Ørsted IPs**”.
- 1.3 In this submission, the Ørsted IPs respond to comments made by the Applicant on the Ørsted IPs’ written representations [PD-017].
- 1.4 In particular, the Ørsted IPs wish to respond to the Applicant’s comments regarding energy yield/wake loss, and two of the Ørsted IPs Walney Extension Limited (“**WEL**”) and Morecambe Wind Limited (“**MWL**”) wish to respond to comments made in respect of shipping and navigation.
- 1.5 We note that the Ørsted IPs’ responses on energy yield build upon, and should be read alongside, the documents submitted in response to the written questions of the examining authority (“**ExQ1**”) [PD-004], also provided at deadline 3.

## 2. Energy yield / wake loss

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- 2.1 The Ørsted IPs note that the Applicant’s comments on their written representations [REP2-005] cover several key issues and refer to the Applicant’s deadline 1 ‘response to wake loss’ submission [REP1-016]. For ease of reading, the Ørsted IPs’ responses are structured by issue and respond to the Applicant’s comments in [REP2-005] and [REP1-016].

### *Requirement for assessment<sup>1</sup>*

- 2.2 The Applicant does not consider there is a legal or policy basis for a wake loss assessment. In particular, the Applicant asserts that there is no scope to consider wake loss through the EIA process.
- 2.3 The Ørsted IPs do not agree. As explained in the Ørsted IPs’ response to ExQ1 INF.4(vii), effects on climate fall within the scope of the EIA process. Regulation 5(2) of the EIA Regulations sets out the factors for which significant effects should be assessed, including ‘climate’. Effects on climate are further elaborated on in under Schedule 4 (Information for inclusion in Environmental Statements), which relevantly provides that “*the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions)*” should be assessed.
- 2.4 The Applicant has carried out an assessment of the Project’s impacts in respect of climate change in its Environmental Statement (F2.12 Environmental Statement - Volume 2, Chapter 12 Climate change) [APP-016]. This assessment includes a net assessment of the GHG emissions arising from the Project, and concludes the Project will have a significant benefit in EIA terms, as a result of avoided emissions.
- 2.5 We consider that the Applicant’s net assessment of the climate benefits of the Project is likely to be inaccurate, as it does not account for the loss or renewable energy generation at the Ørsted IPs’ developments.
- 2.6 Notwithstanding the above, the Ørsted IPs consider the requirement to undertake an assessment is grounded primarily in the NPS-EN3, which is the primary policy for Secretary of State (“**SoS**”) decision making relating to renewable energy NSIPs (alongside NPS-EN1). In particular, the following provisions are relevant:
  - 2.6.1 Paragraph 2.8.197 requires that, where a potential offshore wind farm is proposed “*close to existing operational infrastructure or has the potential to affect activities for which a licence has been issued by government*” the Applicant should assess the potential effects on that development.

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<sup>1</sup> Raised in responses at REP1-060.11, REP1-061.11, REP1-062.13, REP1-063.11, REP1-064.17 and REP1-066.7 of [REP2-005].

- 2.6.2 Paragraphs 2.8.344-2.8.345, which relate to SoS decision making, direct that where a project potentially affects other offshore infrastructure or activity, applicants should work with the relevant sector to minimise negative impacts,<sup>2</sup> and that the SoS should be satisfied that “*the site selection and site design of a proposed offshore wind farm and offshore transmission has been made with a view to avoiding or minimising disruption or economic loss... to other offshore industries.*”
- 2.7 The Ørsted IPs’ developments constitute “*existing operational infrastructure*” which is “*close to*” to the Project. Proximity in the context of this policy should be determined on the basis of the potential for the existing infrastructure in question to be impacted by the project – there is no other meaningful basis for making this determination in a planning context.
- 2.8 The Ørsted IPs have submitted a substantial portfolio of academic evidence which demonstrates that material wake effects can occur at farm-to-farm separation distances greater than 30km. Additionally, preliminary modelling commissioned by the Ørsted IPs indicates the Project is likely to have a material impact on their developments (ranging between 0.2-3.5% AEP, and considerably higher cumulative effects at each development). Evidently, the developments are “*close*” for the purposes of this effect.
- 2.9 Therefore, the Applicant is required to undertake an assessment. Until it does so, the Secretary of State will not be in a position to carry out its decision making in accordance with 2.8.344-2.8.345 of the NPS-EN3, as required by section 104 of the Planning Act 2008.
- 2.10 The Applicant has referred to steps it has taken to minimise the effects of the Project generally by reducing the array area. We do not consider this is sufficient to exercise decision making in accordance with 2.8.344-2.8.345 of the NPS-EN3 - without assessing and understanding the effects of the Project, it is not possible to understand whether such effects have been avoided, minimised or properly designed for.
- 2.11 The Ørsted IPs also do not consider compliance with siting requirements in the TCE leasing process is sufficient to satisfy the SoS of its decision-making obligations.<sup>3</sup> As noted in previous submissions, that process was not designed to regulate effects between sea-users in the manner contemplated by paragraphs 2.8.344-2.8.345.

#### *Support for the Project under the NPSs<sup>4</sup>*

- 2.12 The Applicant has highlighted a number of NPS policies which provide support for the Project. The Applicant has relied on these policies so support its position that an assessment of wake effects is not required. In particular, the Applicant has flagged that some of these policies recognise that there will be residual adverse effects as a result of new renewable energy development (in particular, paragraphs 3.1.1-3.1.2 of the NPS EN-1).
- 2.13 The Ørsted IPs do not dispute that the relevant NPSs provide support for new renewable energy development, in principle. However, these generally supportive policies do not justify noncompliance with specific requirements of the NPSs. Additionally, the policies flagged by the Applicant include caveats that adverse effects will be minimised – they do not provide blanket support regardless of a proposal’s effects.
- 2.14 As highlighted above, the specific policies engaged are those at paragraph 2.8.197 (which requires an assessment of effects to be undertaken where a potential offshore wind farm is proposed “*close to existing operational infrastructure*”), and 2.8.344-2.8.345, which relate to SoS decision making (the SoS must be satisfied site selection/design has been made with a view to avoiding or minimising disruption or economic loss to other offshore industries).
- 2.15 These policies clearly establish a requirement that effects are assessed and minimised. The Applicant refuses to undertake an assessment of the Project’s wake effects and therefore it is not possible to demonstrate that such effects have been minimised. This is particularly important in light of the significance of the impact indicated by the preliminary modelling commissioned by

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<sup>2</sup> Refer to para 2.8.344.

<sup>3</sup> Raised in responses at REP1-060.12, REP1-061.12, REP1-062.14, REP1-063.12, REP1-064.18, REP1-066.8 of [REP2-005].

<sup>4</sup> Raised in responses at REP1-060.11, REP1-061.11, REP1-062.13, REP1-063.11, REP1-064.17 and REP1-066.7 of [REP2-005].

the Ørsted IPs, which indicates that Project-alone impacts will be up to 3.5% and cumulative effects up to 5.3%.

*Difficulty of undertaking an assessment*<sup>5</sup>

- 2.16 The Applicant considers that a wake loss assessment cannot be undertaken to “*provide a meaningful or reliable assessment*”.<sup>6</sup> This is a remarkable statement. Energy yield is the key economic driver for the Project. The idea that an assessment of wake impacts cannot be undertaken is simply not credible.
- 2.17 There is a significant body of research on wake effects between offshore windfarms (as evidenced by the research submitted by the Ørsted IPs). Specialist consultants who work with the offshore wind industry have developed software and models to assist the industry in understanding energy yield and wake effects.
- 2.18 As with modelling of other environmental factors, assumptions must be made in carrying out such assessments. In that regard, there is the potential to utilise both publicly available and private information to facilitate the modelling of effect. As we have previously submitted, the Applicant is best placed to provide information regarding site layout and information about existing schemes is in the public domain.
- 2.19 There are ways information can be provided which assists in improving the accuracy and robustness of the assessment. This is standard practice in the offshore wind industry and there is no reason why this information should be withheld. In respect of the disclosure of confidential information, the Ørsted IPs consider there are a number of ways the parties could manage this risk – for example, through the agreement of NDAs, or through the provision of confidential information to an agreed third party to undertake the analysis. It is noted that similar arrangements exist with other stakeholders in relation to commercially sensitive information (for example, in respect of commercial fisheries).
- 2.20 Therefore, wake loss is an effect which, practically speaking, can be accurately and robustly assessed.
- 2.21 While undertaking an assessment of wake loss effects is not necessarily a simple exercise, we consider that all of the challenges raised by the Applicant are capable of being overcome through cooperation between the parties. We note that the NPS-EN3 directs applicants to work with affected industries “*with an aim to resolve as many issues as possible*”.<sup>7</sup> There has been no attempt by the Applicant to work productively with the Ørsted IPs on this matter. Furthermore, the Ørsted IPs consider that difficulty in carrying out an assessment does not exempt the Applicant from fulfilling this requirement.
- 2.22 The Applicant has also suggested that a “*lack of existing guidance or policy for undertaking such an assessment*” means that an assessment cannot be undertaken. We note that is not a requirement under the NPS-EN3 that an effect must be subject to Government-level/singular guidance in order to be assessed.
- 2.23 Projects of the scale contemplated by the NSIP consenting process are likely to result in a large variety of potential effects, some of which may not yet be subject to single industry guidance. The purpose of these policies is to ensure that the effects of a project on pre-existing/authorised infrastructure are understood and addressed. Applicants for developments of this significance should be prepared to respond to the potential for such effects, and as directed by the NPS-EN3 should be working with the relevant sector to ensure effects are addressed.
- 2.24 Additionally, as explained above, there is a significant body of research on wake effects between offshore windfarms and specialist consultants who work with the offshore wind industry have developed software and models to assist the industry in understanding energy yield and wake effects.

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<sup>5</sup> Raised in responses at REP1-060.14, REP1-061.14, REP1-062.16, REP1-063.14, REP1-064.20, REP1-066.10 of [REP2-005].

<sup>6</sup> At 1.2.6.1 of [REP1-016].

<sup>7</sup> At 2.8.200.

## Shipping and navigation

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- 2.25 At REP1-062.6 and REP1-064.10, the Applicant has noted (in response to WEL and MWL's submissions that the Project will result in a change in risk at their developments), that its NRA concludes that navigation risks having been reduced to as low as reasonably practicable.
- 2.26 MWL and WEL note that NRA provides information relating to overall risks, rather than risks to individual receptors. MWL and WEL consider this is a matter best discussed between the parties in the first instance, and intend to reach out to the Applicant on that basis. MWL and WEL note they consider the same principle applies to information regarding ongoing engagement with vessel operators (responded to at REP1-062.9 and REP1-064.13). MWL and WEL reserve their rights to raise this issue during the examination, if engagement is not forthcoming.
- 2.27 The Applicant has referred to Marine Navigation Engagement Forum ("**MNEF**"), in response to MWL and WEL's requests for direct engagement on a number of issues.<sup>8</sup>
- 2.28 MWL and WEL welcomes engagement via the MNEF. However, they consider that the MNEF as presently proposed and operated does not adequately address the matters which on which they seek engagement. MWL and WEL seek a formal commitment being consulted directly on any plans relating to Project vessel movements (including routes used and passing distance from their assets) and emergency response planning (search and rescue and marine pollution). It is not clear that the MMO, Trinity House, MCA or UKHO would consider MWL and WEL as part of the plans referred to by the Applicant. Therefore, MWL and WEL seek direct engagement on post-consent plans, in particular the Vessel Traffic Management Plan. We suggest that this could be secured via a provision in the Vessel Traffic Management Plan.
- 2.29 The Applicant makes a number of references to a hazard workshop which took place in September 2023, and notes concerns related to MWL and WEL's assets could have been raised at that stage. We note that insufficient information was made available regarding the concerns MWL and WEL have raised in this examination to be identified and discussed at this workshop.

**Shepherd & Wedderburn LLP**

**12.11.2024**

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<sup>8</sup> Refer to REP1-062.7, REP1-062.8, REP1-062.10 and REP1-064.11, REP1-064.12 and REP1-064.14 of [REP2-005].