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STATUTORY INSTRUMENTS

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**2013 No. 343**

**INFRASTRUCTURE PLANNING**

**The Kentish Flats Extension Order 2013**

*Made* - - - - *19th February 2013*

*Coming into force* - - *20th February 2013*

An application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(1) for an Order granting development consent;

The application was examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the Planning Act 2008(2) (“the 2008 Act”);

The single appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals;

In exercise of the powers conferred by sections 114, 115, 120, and 149A of the 2008 Act the Secretary of State makes the following Order:

**Citation and commencement**

**1.** This Order may be cited as the Kentish Flats Extension Order 2013 and shall come into force on 20th February 2013.

**Interpretation**

**2.—(1)** Except for Schedule 2 which is subject to the definitions provided in that Schedule, in this Order—

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(1) [S.I. 2009/2264](#), amended by [S.I. 2010/602](#), [2012/635](#), [2012/2732](#).  
(2) [2008 c. 29](#). The relevant provisions of the Planning Act 2008 are amended by Part 6 of Chapter 6 of, and Schedule 13 to, the Localism Act 2011 ([c. 20](#)). Following the abolition of the Infrastructure Commission on 1st April 2012 the single person appointed under section 61(2) of the Planning Act 2008 is treated as if appointed by the Secretary of State by virtue of a direction given by the Secretary of State under section 129 of the Localism Act.

- “the 1990 Act” means the Town and Country Planning Act 1990(3);
- “the 2004 Act” means the Energy Act 2004(4);
- “the 2008 Act” means the Planning Act 2008;
- “the 2009 Act” means the Marine and Coastal Access Act 2009(5);
- “ancillary works” means the ancillary works described in Part 2 of Schedule 1 and any other works authorised by the Order and which are not development within the meaning of section 32 of the 2008 Act;
- “authorised development” means the development described in Part 1 of Schedule 1;
- “the authorised project” means the authorised development and the ancillary works authorised by this Order;
- “the centre point of a turbine” means the centre point bisecting the turbine tower, transition piece and foundation;
- “the deemed Marine Licence” means the marine licence set out in Schedule 2 and deemed by article 12 to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;
- “the environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order being application document reference number 4.1-4.3 dated October 2011;
- “the export cable area” means the area described as such in Part 1 of Schedule 1 whose co-ordinates are specified in that Schedule;
- “the land plan” means the plan No 5.3 (Drawing no. 9V9546/30/004 rev. 002) certified as the land plan by the Secretary of State for the purposes of this Order;
- “the licence conditions” means the conditions set out in Part 2 of Schedule 2;
- “the limits of deviation” means the limits of deviation for the scheduled works comprised in the authorised development shown on the works plan;
- “the local planning authority” means Canterbury City Council or any successor to its statutory functions as a planning authority;
- “maintain” includes maintain, inspect, repair, adjust, alter and refurbish and “maintenance” shall be construed accordingly;
- “the Maritime and Coastguard Agency” or “MCA” means the executive agency of the Department for Transport or any successor to its functions;
- “mean high water level” or “MHW” means the level of mean high water spring tides;
- “mean low water level” or “MLW” means the level of mean low water spring tides;
- “the Marine Management Organisation” or “MMO” means the body of that name created under the Marine and Coastal Access Act 2009 or any successor to its statutory functions;
- “monopole foundation” means a metal pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment;
- “the offshore development area” means the area described as such in Part 1 of Schedule 1 whose co-ordinates are specified in that Schedule;
- “the Order limits” means the limits shown on the Order limits plan and works plan as the limits within which the authorised development may be carried out;

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(3) 1990 c. 8; section 78 was extended by section 50(1) of the Planning and Compulsory Purchase Act 2004 (c. 5). There are other amendments to the 1990 Act which are not relevant to this Order.

(4) 2004 c. 20; section 105 was amended by section 69 of the Energy Act 2008 (c. 32).

(5) 2009 c. 23.

“the Order limits plan” means the plan No 2.1 (Drawing no. 9V9546/30/001 rev. 004) certified as the Order limits plan by the Secretary of State for the purposes of this Order;

“the PLA” means the Port of London Authority or any successor to its statutory functions;

“the project design statement” means the document certified as the project design statement by the Secretary of State for the purposes of this Order being application document reference number 7.2 dated 10 October 2011;

“the Requirements” means the requirements set out in paragraphs 2 to 18 of Part 3 of Schedule 1;

“the scheduled works” means the works numbered 1a, 1b, 2a and 2b specified in Part 1 of Schedule 1, or any part of them as the same may be varied pursuant to article 4 of this Order;

“the Secretary of State” means the Secretary of State responsible for determining an application for development consent for the authorised development;

“Trinity House” means the Corporation of Trinity House of Deptford Strond or any successor to its functions;

“the undertaker” means, subject to article 7(3) of this Order, Vattenfall Wind Power Ltd;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” or “wind turbine” means a structure comprising any or all of a tower, transition piece, rotor, blades, nacelle and ancillary electrical and other equipment which may include lighting, j-tubes, transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, fixed to a foundation; and

“the works plan” means the plan No 5.4 (Drawing no. 9V9546/30/005 rev. 006) certified as the works plan by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface.

(3) References in this Order to numbered Requirements are to the Requirements with those numbers in Part 3 of Schedule 1.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order, the Requirements and the provisions and conditions of the deemed Marine Licence, the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to article 4 the authorised development shall be constructed in the lines or situations shown on the works plan.

### **Limits of deviation**

4. Subject to Requirements 4 and 5, in carrying out or maintaining the scheduled works the undertaker may deviate laterally from the lines or situations shown on the works plan to the extent of the limits of deviation.

### **Maintenance of authorised project**

5. Subject to—

- (a) the other terms of this Order, including the Requirements and the provisions and conditions of the deemed Marine Licence; and
- (b) any contrary provision in an agreement made under this Order,

the undertaker may at any time maintain the authorised project.

### **Operation of electricity generating station**

6.—(1) The undertaker is authorised to operate the electricity generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of the electricity generating station.

### **Consent to transfer benefit of Order**

7.—(1) Except as provided for in this article, section 156(1) of the 2008 Act applies to the grant of development consent by this Order.

(2) Subject to paragraph (5), the undertaker may—

- (a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (the “lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(3) Where a transfer or grant has been made in accordance with this article references in this Order to the undertaker, except in paragraphs (4) and (5) shall include references to the transferee or the lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under this article shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(5) Not later than 21 days after entering into any transfer or grant under paragraph (1) the undertaker shall give written notice to the Secretary of State, Trinity House, the PLA, the MCA and the MMO stating the name and address of the person to whom the benefits or rights were conferred and the date when the transfer or grant is to take effect (which shall not be earlier than the date of receipt of the notice by whichever of the Secretary of State, Trinity House, the PLA, the MCA or the MMO is the last to be notified).

### **Requirements, appeals etc**

8.—(1) Where an application is made to the local planning authority for any consent, agreement or approval required by Requirements 3 or 12 to 15 (requirements that relate to land above MLW),

the following provisions apply in respect of that application as they would apply if the consent, agreement or approval so required was required by a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

### **Public rights of navigation**

9.—(1) Subject to paragraphs (2) and (3), the rights of navigation over the places in the sea where each individual wind turbine generator comprising part of the authorised development is located (“the relevant rights of navigation”) shall be extinguished.

(2) The extinguishment of the relevant rights of navigation shall take effect 14 days after the undertaker has submitted a plan to the Secretary of State, Trinity House, the PLA, the MCA and the MMO showing the precise locations of the foundations of each of the wind turbine generators to be constructed as part of the authorised development.

(3) In respect of the location of any individual wind turbine generator, paragraph (1) shall cease to have effect as soon as that wind turbine generator has been decommissioned and permanently removed, and the relevant rights of navigation shall resume.

(4) The plan submitted in accordance with paragraph (2) shall be published by the undertaker in such form and manner as required by the Secretary of State.

### **Abatement of works abandoned or decayed**

10.—(1) Where the authorised project or any part of it is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore the authorised project or any part, or to remove the authorised project and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) In circumstances where the undertaker is required to remove the authorised project, without prejudice to any obligations on the undertaker deriving from any notice served under section 105(2) of the 2004 Act, the notice may also require the restoration of the site of the relevant part of the authorised project to a safe and proper condition within such area and to such an extent as may be specified in the notice.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in doing so shall be recoverable from the undertaker.

### **Survey of works**

11.—(1) If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of the authorised project or of the site on which it is proposed to construct the authorised project, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.

(2) Except in the case of an emergency such surveys shall not be ordered more frequently than once a year, and before ordering such a survey the Secretary of State shall—

- (a) consult the undertaker in order to establish what relevant survey information is already available; and
- (b) give the undertaker an opportunity to carry out the survey itself.

### **Deemed licence under the Marine and Coastal Access Act 2009**

12. The undertaker is deemed to have been granted a licence under Part 4 Chapter 1 of the 2009 Act to carry out the works and make the deposits described in Schedule 2, subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

### **Saving for Trinity House**

13. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

### **Crown rights**

14.—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown; or
- (b) authorise the undertaker to take, use, enter upon or in any manner interfere with any land, hereditaments or rights of whatever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners, unless it has the consent in writing of those Commissioners to do so ; or
  - (ii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, unless it has the consent in writing of that government department to do so.

(2) A consent under paragraph (1)(b) may be given unconditionally or may be subject to such conditions or upon such terms as may be considered necessary or appropriate by the Commissioners or by the government department concerned as the case may be.

### **Certification of plans etc**

15.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the Order limits plan;
- (b) the land plan;
- (c) the works plan; and
- (d) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Arbitration**

16. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Energy and Climate Change

19th February 2013

*Giles Scott*  
Head of National Infrastructure Consents  
Department of Energy and Climate Change

## SCHEDULE 1

Article 2(1)

## Authorised project

## PART 1

## Authorised development

1. A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act comprising an offshore wind turbine generating station with an installed capacity of up to 51 MW being an extension to the existing Kentish Flats offshore wind farm located on the bed of the sea approximately 7.8 kilometres off the coast of Kent and on land within the administrative area of Canterbury City Council and consisting of the following—

(a) within the offshore development area—

(i) Work No. 1a—

between 10 and 17 (inclusive) wind turbine generators fixed to the seabed by monopile foundations; and

(ii) Work No. 1b—

a network of subsea inter-array cables connecting the wind turbine generators to each other.

## Co-ordinates for offshore development area

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
A1	51°27'58.960"	01°01'57.889"
A2	51°28'06.600"	01°03'13.800"
A3	51°26'49.200"	01°04'51.000"
A4	51°27'08.400"	01°08'02.400"
A5	51°26'48.536"	01°08'27.326"
A6	51°26'21.713"	01°04'00.060"

**Associated development**

2. Within the export cable area—

(a) Work No. 2a—

a connection consisting of subsea cables from one or more of the wind turbine generators comprised within Work No. 1a to shore, including cable crossing works, and terminating at the cable transition pit; and

(b) Work No. 2b—

a cable transition pit, including cables.

## Co-ordinates for export cable area

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
B1	51°26'49.516"	01°03'25.151"
B2	51°26'57.154"	01°04'41.017"



<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
B3	51°26'49.200"	01°04'51.000"
B4	51°27'08.400"	01°08'02.400"
B5	51°26'44.304"	01°08'32.636"
B6	51°26'30.954"	01°06'19.501"
B7	51°22'34.716"	01°06'13.284"
B8	51°22'20.604"	01°05'58.812"
B9	51°22'19.812"	01°05'58.812"
B10	51°22'19.92"	01°05'56.256"
B11	51°22'33.685"	01°05'26.707"
B12	51°26'26.282"	01°05'32.847"
B13	51°26'17.484"	01°04'05.369"

## PART 2

### Ancillary works

1.—(1) Temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development.

(2) Buoys, beacons, fenders and other navigational warning or ship impact protection works.

(3) Temporary works for the benefit or protection of land or structures affected by the authorised development.

## PART 3

### Requirements

#### Interpretation

1.—(1) In this Part of this Schedule—

“the CAA” means the Civil Aviation Authority constituted by the Civil Aviation Act 1982(6) or any successor to its statutory functions;

“commence” means begin to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

“English Heritage” means the Historic Buildings and Monuments Commission for England or any successor to its statutory functions;

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(6) 1982 c. 16.

“Natural England” means the body established by section 1 of the Natural Environment and Rural Communities Act 2006(7) and includes any successor to its statutory functions;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“the UK Hydrographic Office” means the Hydrographic Office of the Ministry of Defence, Taunton, Somerset TA1 2DN or any replacement body or successor to its functions; and

“Work No” means that part of the authorised development with the corresponding number specified in Part 1 of this Schedule.

(2) In this Schedule references to the locations of a wind turbine are references to the centre point of that turbine.

### Time limits

2. The authorised development shall commence no later than the expiration of five years beginning with the date this Order comes into force or the expiration of such longer period as the Secretary of State may direct in writing.

### Detailed design approval

3.—(1) No authorised development shall commence until the location and detailed specifications for Work Nos. 2a and 2b above mean low water level have been submitted to and approved in writing by the local planning authority.

(2) The detailed specifications for Work Nos. 2a and 2b above mean low water level shall accord with the principles of the project design statement and shall only take place within the limits of deviation.

(3) Work Nos. 2a and 2b must be carried out in accordance with the details approved under sub-paragraph (1).

(4) Subject to sub-paragraphs (1) and (2), the authorised development must be carried out in accordance with—

- (a) the Order limits plan; and
- (b) the works plan.

### Detailed design parameters

4. The wind turbine generators forming part of the authorised development shall be located within the Order limits and within 160 metres of the grid co-ordinates listed below.

<i>Turbine</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
T1	51°27'56.719"	01°02'11.603"
T2	51°28'00.579"	01°02'47.537"
T3	51°27'38.990"	01°02'33.993"
T4	51°27'42.632"	01°03'10.491"
T5	51°27'21.259"	01°02'56.378"
T6	51°27'24.677"	01°03'32.602"

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(7) 2006 c. 16. Section 1 was amended by section 311(2) and (3) of the Marine and Coastal Access Act 2009 (c. 23).

<i>Turbine</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
T7	51°27'03.300"	01°03'19.206"
T8	51°27'06.943"	01°03'54.979"
T9	51°26'45.416"	01°03'42.001"
T10	51°26'48.994"	01°04'17.918"
T11	51°26'27.428"	01°04'04.186"
T12	51°26'31.046"	01°04'39.957"
T13	51°26'34.817"	01°05'15.662"
T14	51°26'42.074"	01°06'27.237"
T15	51°26'45.659"	01°07'03.019"
T16	51°26'49.262"	01°07'38.798"
T17	51°26'52.861"	01°08'14.578"

5. Except with the prior written approval of the Secretary of State all wind turbine generators forming part of the authorised development shall be of the same make, model and size, have three blades and shall not—

- (a) exceed a height of 145 metres or be less than 115 metres high when measured from mean sea level to the tip of the vertical blade;
- (b) exceed a height of 85 metres or be less than 70 metres high to the hub when measured from mean sea level;
- (c) exceed a rotor diameter of 120 metres or have a rotor diameter of less than 90 metres;
- (d) have a distance of less than 22 metres between the lowest point of the rotating blade of the wind turbine and mean high water level;
- (e) subject to Requirement 9 be lit unless the lighting used is of a shape, colour and character as required by the Air Navigation Order 2009(8) or as directed by the CAA; and
- (f) subject to Requirement 9, be painted in any colour other than submarine grey RA7035.

6.—(1) The total length of the cables comprising Work No. 1b shall not exceed 12 kilometres.

(2) The total length of the cables comprising Work No. 2a shall not exceed 18 kilometres.

(3) The number of cables forming part of Work No. 2a and installed within the export cable area shall not exceed two.

7. Each monopile foundation forming part of the authorised development shall not have a diameter greater than 6 metres.

### **Safety management**

8.—(1) No authorised development shall commence until the Secretary of State, in consultation with the MCA, has given written approval of a plan for an active safety management system in accordance with the MCA recommendations in Annex 4 of the document MGN 371 Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues.

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(8) [S.I. 2009/3015](#).

(2) No authorised development shall commence until the Secretary of State, in consultation with the MCA, has given written approval of a plan providing full details of the emergency co-operation plans for the construction, operation and decommissioning phases of the authorised development which satisfies the MCA recommendations in Annex 5 of the document MGN 371 Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues.

(3) The active safety management system and emergency response and co-operation plans must be implemented as approved unless otherwise agreed in writing by the Secretary of State.

### **Lighting**

**9.** The undertaker shall during the whole period from the start of construction of the authorised development to the completion of decommissioning—

- (a) exhibit such lights, marks, sounds, signals and other aids to navigation as Trinity House, may from time to time direct;
- (b) colour all structures in the authorised development as directed by Trinity House;
- (c) provide such relevant information as the MCA may request to assist in the timely and efficient issuing of notices to mariners and other navigational warnings of the position and nature of the works, such information to be provided to mariners in the shipping and fishing industry as well as to recreational mariners;
- (d) notify Trinity House as soon as reasonably practicable of both the progress and completion of the authorised development and any aids to navigation established from time to time; and
- (e) provide reports on the working condition of aids to navigation periodically as requested by Trinity House.

### **Aviation safety**

**10.—(1)** Prior to the commencement of the authorised development the following information shall be provided in writing to the UK Hydrographic Office and Defence Infrastructure Organisation Safeguarding—

- (a) the date of the commencement and completion of construction of the authorised development;
- (b) the maximum height of any construction equipment to be used;
- (c) the latitude, longitude and height of each wind turbine generator installed; and
- (d) which wind turbine generators are to be fitted with aviation obstruction lighting,

and the UK Hydrographic Office and Defence Infrastructure Organisation Safeguarding shall be notified of any changes to the information supplied under this paragraph and of the completion of construction of the authorised development.

(2) No wind turbine generator forming part of the authorised development shall begin to be constructed until the Secretary of State, having consulted the CAA and all relevant Air Navigation Services Providers, is satisfied that mitigation to address the impact of the authorised development on civil aviation will be implemented and maintained for the life of the authorised project and that arrangements have been put in place to ensure that such mitigation is implemented before the development gives rise to any adverse impact on air traffic services for civil aviation.

(3) For the purposes of this Requirement—

- (a) “wind turbine generator” does not include the installation of turbine foundations and transition pieces;

- (b) “Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions; and
- (c) “Air Navigation Service Provider” means any person or organisation certified and designated by the CAA for the provision of air traffic services to civil aviation.

#### **Provision against danger to navigation**

**11.** In case of damage to, or destruction or decay of, the authorised development or any part of it the undertaker shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

#### **Archaeology above mean low water level**

**12.—(1)** No part of the authorised development above mean low water level shall commence until a written scheme for the investigation of areas of archaeological interest above MLW has, after consultation with English Heritage, been submitted to and approved by the local planning authority.

(2) The scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the approved scheme must be undertaken by a suitably qualified person or body approved by the local planning authority.

(4) Any archaeological works or watching brief must be undertaken in accordance with the approved scheme unless otherwise agreed in writing by the local planning authority.

#### **Ecological management plan above mean low water level**

**13.—(1)** No part of the authorised development above mean low water level shall commence until a written ecological management plan relating to the land above MLW and reflecting the survey results and ecological mitigation measures included in the environmental statement has been submitted to and approved by the local planning authority after consultation with Natural England.

(2) The ecological management plan shall include an implementation timetable and must be carried out as approved unless otherwise agreed in writing by the local planning authority.

#### **Code of construction practice**

**14.—(1)** No part of the authorised development above mean low water level shall commence until a code of construction practice relating to the works authorised above MLW has been submitted to and approved by the local planning authority.

(2) All construction works shall be undertaken in accordance with the approved code unless otherwise agreed in writing by the local planning authority.

#### **Construction hours**

**15.—(1)** Construction work above mean low water level shall only take place between 0800 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, and not on Sundays or public holidays, unless otherwise agreed in writing by the local planning authority.

(2) Nothing in sub-paragraph (1) precludes a start-up period from 0730 to 0800 on weekdays and Saturdays and a shut-down period from 1800 to 1830 on weekdays and from 1300 to 1330 on Saturdays.

## **Decommissioning**

**16.**—(1) No part of the authorised development shall commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval.

(2) The written decommissioning programme shall satisfy the requirements of section 105(8) of the 2004 Act.

(3) The decommissioning of the authorised development shall be undertaken in accordance with the approved decommissioning programme or any subsequent decommissioning programme approved in writing by the Secretary of State.

(4) For the avoidance of doubt decommissioning measures are not authorised by this Order. Decommissioning measures will be set out in the decommissioning programme required under subparagraph (1).

## **Requirement for written approval**

**17.** Where under any of the above Requirements the approval or agreement of the Secretary of State, the local planning authority or another person or body is required, that approval or agreement must be given in writing.

## **Amendments to approved details**

**18.** With respect to any Requirement which requires the authorised development to be carried out in accordance with a detailed specification, plan, scheme or code approved by the local planning authority or any other person or body, the approved details, plan, scheme or code shall be taken to include any amendments that may subsequently be approved in writing by the local planning authority or that other person or body.

## SCHEDULE 2

Articles 2(1), 3(1), 5 and 12

### Deemed licence under the Marine and Coastal Access Act 2009

## PART 1

### Interpretation

**1.**—(1) In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(9)</sup>;

“the 2008 Act” means the Planning Act 2008<sup>(10)</sup>;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised deposits” means the substances and articles specified in paragraph 2(4) of Part 1 of this Schedule;

“authorised development” means the development described in Part 1 of Schedule 1 to the Order;

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<sup>(9)</sup> 1990 c. 8.

<sup>(10)</sup> 2008 c. 29.

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any replacement body or successor to its functions;

“the centre point of a wind turbine” means the centre point bisecting the turbine tower, transition piece and foundation;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions and “commencement” shall be construed accordingly;

“enforcement officer” means a marine enforcement officer within the meaning of section 235 of the 2009 Act;

“English Heritage” means the Historic Buildings and Monuments Commission for England or any successor to its statutory functions;

“the Environment Agency” means the body established under the Environment Act 1995<sup>(11)</sup> or any successor to its statutory functions;

“the environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order being application document reference number 4.1-4.3 dated October 2011;

“the Health and Safety Executive” or “HSE” means the body established under section 10 of the Health and Safety at Work etc. Act 1974<sup>(12)</sup> or any successor to its statutory functions or other authority performing, carrying out or having the same regulatory functions as the HSE has at the date of this licence;

“the intertidal area” means the area between mean high water level and mean low water level;

“the Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this Schedule;

“the licence conditions” means the conditions set out in Part 2 of this Schedule;

“licensed activities” means the activities listed in Part 1 of this Schedule;

“the Marine Management Organisation” or “MMO” means the body of that name created under the Marine and Coastal Access Act 2009 or any successor to its functions;

“the Maritime and Coastguard Agency” or “MCA” means the executive agency of the Department for Transport or any successor to its functions;

“mean high water level” or “MHW” means the level of mean high water spring tides;

“mean low water level” or “MLW” means the level of mean low water spring tides;

“monopile foundation” means a metal pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment;

“Natural England” means the body established by section 1 of the Natural Environment and Rural Communities Act 2006 or any successor to its statutory functions;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“the Order” means the Kentish Flats Extension Order 2013;

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(11) 1995 c. 25.

(12) 1974 c. 37; section 10 of the Health and Safety at Work Act is substituted by S.I. 2008/960.

“the Order limits” means the limits shown on the Order limits plan and works plan as the limits within which the authorised development may be carried out;

“the Order limits plan” means plan No 2.1 (Drawing no. 9V9546/30/001 rev. 004) certified as the Order limits plan by the Secretary of State for the purposes of the Order;

“PLA” means the Port of London Authority or any successor to its statutory functions;

“the project design statement” means the document certified as the project design statement by the Secretary of State for the purposes of the Order being document reference number 7.2 dated 10 October 2011;

“regulatory authorities” means any government department, public, local or regulatory or any other authority or institution having regulatory functions, powers, duties and obligations having the full force of law;

“the Requirements” means the requirements set out in paragraphs 2 to 18 of Part 3 of Schedule 1 to the Order;

“Trinity House” means the Corporation of Trinity House of Deptford Strond or any successor to its functions;

“the UK Hydrographic Office” means the Hydrographic Office of the Ministry of Defence, Taunton, Somerset TA1 2DN or any replacement body or successor to its functions;

“the undertaker” means, subject to article 7(3) of the Order, Vattenfall Wind Power Ltd;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“VHF” means very high frequency; and

“wind turbine generator” or “wind turbine” means a structure comprising any or all of a tower, transition piece, rotor, blades, nacelle and ancillary electrical and other equipment which may include lighting, j-tubes, transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, fixed to a foundation;

“the works plan” means the plan No 5.4 (Drawing no. 9V9546/30/005 rev. 006) certified as the works plan by the Secretary of State for the purposes of the Order.

(2) In this Schedule references to the locations of a wind turbine are references to the centre point of that turbine.

(3) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence shall be—

(a) Marine Management Organisation

Marine Environment Team  
PO Box 1275  
Newcastle upon Tyne  
NE99 5BN  
Tel: 0191 376 2525

(b) Marine Management Organisation

Coastal Office  
Fish Market  
Rock-A-Nore Road



- Hastings  
East Sussex  
TN34 3DW
- (c) Trinity House  
Tower Hill  
London  
EC3N 4DH  
Tel: 020 7481 6900
- (d) The United Kingdom Hydrographic Office  
Admiralty Way  
Taunton  
Somerset  
TA1 2DN  
Tel: 01823 337 900
- (e) Maritime and Coastguard Agency  
Navigation Safety Branch  
Bay 2/04  
Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG  
Tel: 023 8032 9191
- (f) Centre of Environment, Fisheries and Aquaculture Science  
Pakefield Road  
Lowestoft  
Suffolk  
NR33 0HT  
Tel: 01502 562 244
- (g) The Environment Agency  
Orchard House  
Endeavour Park  
London Road  
Addington  
West Malling  
Kent  
ME19 5SH  
Tel: 01732 223272
- (h) Natural England  
Hercules House

Hercules Road  
Lambeth  
London  
SE1 7DU  
Tel: 0300 060 4911

- (i) English Heritage  
Eastgate Court  
195-205 High Street  
Guildford  
GU1 3EH  
Tel: 01483 252 057

- (j) Port of London Authority  
London River House  
Royal Pier Road  
Gravesend  
Kent  
DA12 2BG  
Tel 01474 562200

### Details of licensed marine activities

2.—(1) Subject to the licence conditions this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities pursuant to section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in sub-paragraph (3);  
 (b) the construction of works in or over the sea and/or on or under the sea bed; and  
 (c) sampling or investigative works required in connection with paragraphs (a) and (b).
- (2) Such activities are authorised in relation to the construction and operation of—
- (a) within the offshore development area—
- (i) Work No. 1a—  
 between 10 and 17 (inclusive) wind turbine generators fixed to the seabed by monopile foundations; and
- (ii) Work No. 1b—  
 a network of inter-array cables connecting the wind turbine generators to each other.

#### Co-ordinates for offshore development area

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
A1	51°27'58.960"	01°01'57.889"
A2	51°28'06.600"	01°03'13.800"
A3	51°26'49.200"	01°04'51.000"
A4	51°27'08.400"	01°08'02.400"

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
A5	51°26'48.536"	01°08'27.326"
A6	51°26'21.713"	01°04'00.060"

(b) and associated development within the meaning of section 115(2) of the 2008 Act comprising within the export cable area—

(i) Work No. 2a—

a connection within the Order limits seaward of mean high water level consisting of subsea cables from one or more of the wind turbine generators comprised within Work No. 1a to shore, including cable crossing works.

Co-ordinates for export cable area

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
B1	51°26'49.516"	01°03'25.151"
B2	51°26'57.154"	01°04'41.017"
B3	51°26'49.200"	01°04'51.000"
B4	51°27'08.400"	01°08'02.400"
B5	51°26'44.304"	01°08'32.636"
B6	51°26'30.954"	01°06'19.501"
B7	51°22'34.716"	01°06'13.284"
B8	51°22'20.604"	01°05'58.812"
B9	51°22'19.812"	01°05'58.812"
B10	51°22'19.92"	01°05'56.256"
B11	51°22'33.685"	01°05'26.707"
B12	51°26'26.282"	01°05'32.847"
B13	51°26'17.484"	01°04'05.369"

(3) For the avoidance of doubt, this licence does not authorise the decommissioning of the authorised development for which a separate marine licence may be required.

(4) The substances or articles authorised for deposit at sea are—

- (a) metal;
- (b) stone and rock;
- (c) concrete;
- (d) sand; and
- (e) plastic/synthetic.

(5) The provisions of section 72 of the 2009 Act shall apply to this licence, save that the provisions of section 72(7) relating to the transfer of the licence shall only apply to a transfer not falling within article 7 of the Order.

## PART 2

### Licence conditions

#### Design parameters

1. The wind turbine generators forming part of the authorised development shall be located within the Order limits and within 160 metres of the grid co-ordinates listed below.

<i>Turbine</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
T1	51°27'56.719"	01°02'11.603"
T2	51°28'00.579"	01°02'47.537"
T3	51°27'38.990"	01°02'33.993"
T4	51°27'42.632"	01°03'10.491"
T5	51°27'21.259"	01°02'56.378"
T6	51°27'24.677"	01°03'32.602"
T7	51°27'03.300"	01°03'19.206"
T8	51°27'06.943"	01°03'54.979"
T9	51°26'45.416"	01°03'42.001"
T10	51°26'48.994"	01°04'17.918"
T11	51°26'27.428"	01°04'04.186"
T12	51°26'31.046"	01°04'39.957"
T13	51°26'34.817"	01°05'15.662"
T14	51°26'42.074"	01°06'27.237"
T15	51°26'45.659"	01°07'03.019"
T16	51°26'49.262"	01°07'38.798"
T17	51°26'52.861"	01°08'14.578"

2. Except with the prior written approval of the Secretary of State and as assessed in the environmental statement all wind turbine generators forming part of the authorised development shall be of the same make, model and size, have three blades and shall not—

- (a) exceed a height of 145 metres or be less than 115 metres when measured from mean sea level to the tip of the vertical blade;
- (b) exceed a height of 85 metres or be less than 70 metres to the hub when measured from mean sea level;
- (c) exceed a rotor diameter of 120 metres or have a rotor diameter of less than 90 metres;
- (d) have a distance of less than 22 metres between the lowest point of the rotating blade of the wind turbine and mean high water level;
- (e) subject to Requirement 9 be lit unless the lighting used is of a shape, colour and character as required by the Air Navigation Order 2009 or as directed by the CAA; and
- (f) subject to Requirement 9, be painted in any colour other than submarine grey RA7035.

- 3.—(1) The total length of the cables comprising Work No. 1b shall not exceed 12 kilometres.
- (2) The total length of the cables comprising Work No. 2a shall not exceed 18 kilometres.
- (3) The number of cables forming part of Work No. 2a and installed within the export cable area shall not exceed two.
- (4) Each monopile foundation forming part of the authorised development shall not have a diameter greater than 6 metres.
- (5) The undertaker shall notify the MMO in writing within 14 days of any changes to the detailed design parameters approved by the Secretary of State in accordance with licence condition 2.

#### **Notifications and inspections**

- 4.—(1) The undertaker shall ensure that—
- (a) a copy of this licence and any subsequent amendments or revisions to it are provided to—
    - (i) all agents and contractors notified to the MMO in accordance with the conditions of this licence; and
    - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with the conditions of this licence;
  - (b) within 28 days of receipt of a copy of this licence those persons referred to at paragraph (a) shall provide a completed confirmation form to the MMO confirming their understanding of the terms and conditions of this licence.
- (2) Only those persons and vessels notified to the MMO in accordance with the conditions of this licence are permitted to carry out the licensed activities.
- (3) Copies of this licence shall also be available for inspection by an enforcement officer at all reasonable times at the following locations—
- (a) the undertaker's registered address;
  - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits and works; and
  - (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made or authorised works undertaken.
- (4) The undertaker must provide access, and if necessary appropriate transportation, at reasonable notice to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.
- (5) The undertaker must inform the MMO in writing at least five working days prior to the commencement of the licensed activities or any phase of them.
- (6) At least 7 days prior to the commencement of the licensed activities the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised development.
- (7) The undertaker shall ensure that—
- (a) a notice to mariners is issued at least ten days prior to the commencement of the licensed activities advising of the commencement of licensed activities within the offshore development area and the expected vessel routes from the local service ports to the turbine locations; and
  - (b) a second notice to mariners is issued advising of the commencement of licensed activities within the export cable area below mean high water level and the route of the subsea cable(s).

(8) The notices to mariners must be updated and reissued not less frequently than weekly and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under licence condition 9(1)(a). Copies of all notices shall be provided to the MMO.

(9) The undertaker must notify—

- (a) the UK Hydrographic Office of both the progress and completion of the authorised development in order that all necessary amendments to nautical charts are made; and
- (b) the MMO once the authorised development is completed and any lighting or marking required by the Order has been established.

(10) The undertaker must ensure that prior to the commencement of the licensed activities the following suitably qualified and experienced liaison officers are appointed and their identity and credentials provided as part of the project environmental management plan required by licence condition 9(1)(f)—

- (a) a Fisheries Liaison Officer or Officers; and
- (b) an Environmental Liaison Officer or Officers.

(11) The responsibilities of the Environmental Liaison Officer shall include—

- (a) monitoring compliance with this licence and the plans and programmes required by licence condition 9;
- (b) being a central point of contact for the monitoring requirements set out in licence conditions 12, 13 and 14;
- (c) providing induction in relation to environmental policies and procedures;
- (d) ensuring that information is made available and circulated in such a way as to minimise interference with fishing operations and other users of the sea;
- (e) consulting with representatives of relevant national, regional and local navigational interests on the plans required by licence condition 9(1)(g) and (i); and
- (f) delivering the functions and duties required by the written scheme of archaeological investigation required by licence condition 9(1)(j).

(12) The Fisheries Liaison Officer shall represent the views of fishermen to the MMO for the purposes of licence condition 9(1)(b).

(13) Both the Fisheries Liaison Officer and the Environmental Liaison Officer shall be required to establish and maintain communications between the undertaker, contractors, fishermen, conservation groups and other users of the sea for the duration of the licensed activities.

### **Chemicals, drilling and debris**

**5.—(1)** All chemicals used in the construction of the authorised development, including any chemical agents placed within the monopile void, shall be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002(**13**) unless otherwise agreed in writing by the MMO prior to construction works commencing.

(2) All protective coatings and paints shall be suitable for use in the marine environment and approved by the Health and Safety Executive when required under EHS law. The use of such coatings shall accord with best environmental practice.

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(13) [S.I. 2002/1355](#).

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances shall be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

(4) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings shall be obtained before the drilling commences. If the disposal of the arisings has not been assessed within the environmental statement a separate marine licence will also be required.

(5) Written approval from the MMO following consultation with the MCA and Trinity House is required before any rock dumping is carried out. If the proposed rock dumping has not been assessed within the environmental statement a separate marine licence will also be required.

(6) The undertaker shall ensure that any debris or temporary works placed below mean high water level are removed on completion of the authorised development.

(7) At least 14 days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the authorised development below mean high water level. The audit sheet shall include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) working schedules; and
- (f) all components and materials to be used in the construction of the authorised development.

(8) No licensed activities shall commence until the MMO has approved the audit sheet in writing.

(9) The audit sheet shall be maintained throughout the construction of the authorised development and any changes notified immediately in writing to the MMO.

(10) In the event that—

- (a) any of the materials on the audit sheet cannot be accounted for the MMO will require the undertaker to carry out a side scan sonar survey to plot all obstructions across the Order limits;
- (b) any materials that cannot be accounted for are not located within the Order limits the MMO will require the undertaker to extend the side scan sonar survey to cover routes outside the Order limits used by the vessels in undertaking the authorised development.

(11) Local fishermen shall be invited to send a representative to be present during the side scan sonar survey. Any new obstructions that the MMO believes to be associated with the authorised development shall be removed at the undertaker's expense.

(12) For the purposes of this licence condition—

- (a) "best environmental practice" means best environmental practice as defined in Appendix 1 of the 1992 OSPAR Convention on the Protection of the Marine Environment of the North-East Atlantic;
- (b) "EHS law" means all applicable legislation, regulations and legally binding codes of practice and guidance notes issued by regulatory authorities in so far as they relate to or apply to matters relating to the occupational health and safety of any person and/or to the pollution or protection of air, water, land or any or all organisms (including man).

### **Force majeure**

6. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits outside of the Order limits because the safety of human

life and/or of the vessel is threatened, full details of the circumstances of the deposit shall be notified to the MMO within 48 hours.

### **Seasonal restrictions**

7. Except with the prior written approval of the MMO, following consultation with Cefas and Natural England, no monopile foundations shall be installed or works take place within the export cable area between 14 February and 31 May to avoid effects on herring spawning.

8. In the event that cable installation works take place between October and April (inclusive) any such works between mean low water and mean high water shall avoid the period two hours either side of high water to avoid disturbance to roosting turnstone.

### **Pre-construction plans and documentation**

9.—(1) The licensed activities shall not commence until the following have been submitted to and approved in writing by the MMO. Except where otherwise stated or with the prior written approval of the MMO these documents must be submitted to the MMO for approval at least 4 months prior to the commencement of works—

- (a) a construction and monitoring programme to include details of—
  - (i) the proposed construction start date;
  - (ii) timings for mobilisation of plant, delivery of materials and installation works; and
  - (iii) the methodologies and timings for preparing and submitting survey specifications, data collection and analysis and submission of reports and the provision of this information to the MMO, Cefas and Natural England in accordance with licence conditions 12 to 14. This must be submitted 4 months prior to the start of any related survey works;
- (b) the scope of the fish and shellfish surveys required by licence conditions 12(3)(d) and 14(d) which shall only be agreed by the MMO, following consultation with Cefas and the Fisheries Liaison Officer;
- (c) the plans required under paragraphs (g) and (i) which shall only be agreed by the MMO following consultation with the MCA, the PLA and Trinity House;
- (d) where compliance with the construction and monitoring programme agreed under paragraph (a) is not possible, the undertaker must notify the MMO in writing and submit a revised programme for approval. In circumstances where the revised programme affects other plans or documents agreed by the MMO under this paragraph the MMO may require construction works to cease until the revised programme has been approved;
- (e) a construction method statement in accordance with the project design statement and environmental statement and including details of—
  - (i) foundation installation, including drilling methods;
  - (ii) turbine installation, including any scour protection;
  - (iii) cable installation, including cable landfall;
  - (iv) contractors;
  - (v) vessels; and
  - (vi) associated works;
- (f) a project environmental management plan to include details of—
  - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of



- the authorised development in relation to all activities carried out below mean high water level;
- (ii) a chemical risk analysis to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
  - (iii) waste management and disposal arrangements;
  - (iv) the appointment and responsibilities of any officers required in connection with the carrying out of the licensed activities;
  - (v) any seasonal restriction on construction works; and
  - (vi) locations of any archaeological exclusion zones agreed as part of the written scheme of investigation approved under paragraph (j) of this licence condition;
- (g) a scour protection management and cable armouring plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable armoury;
- (h) only where driven or drilled pile foundations are used, a marine mammal mitigation protocol to include—
- (i) identification of a marine mammal monitoring zone;
  - (ii) appointment of marine mammal observer(s);
  - (iii) proposals for the detection of marine mammals (visually and acoustically) within the marine mammal monitoring zone to be undertaken prior to the commencement of piling;
  - (iv) reporting methodology; and
  - (v) description of approved soft-start procedure to be used on commencement of piling;
- (i) cable specification and installation plan, to include—
- (i) technical specification of off-shore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
  - (ii) a detailed cable laying plan, including geotechnical data and cable laying techniques;
  - (iii) provision that the depth of navigable water be maintained as far as reasonably practicable at a minimum of the depth stated upon the relevant Hydrographic Office charts current at the date the Order is made; and
  - (iv) provision to ensure that as far as reasonably practicable no hazard to navigation is created as a result of cable installation and protection works undertaken either during construction or during subsequent maintenance;
- (j) a written scheme of archaeological investigation in accordance with industry good practice to include—
- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
  - (ii) a methodology for any site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
  - (iii) analysis and reporting of survey data to be submitted to the MMO within 3 months of survey completion and shall be agreed in writing with the MMO following consultation with English Heritage;
  - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
  - (v) monitoring during and post construction, including a conservation programme for finds;

- (vi) archiving of archaeological material with a public archive in accordance with the Online Access to the Index of archaeological investigations (OASIS) system; and
- (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development.

(2) The undertaker shall comply with the plans and documentation approved under this licence condition in carrying out the licensed activities unless otherwise agreed in writing by the MMO.

#### **Reporting of engaged agents, contractors and vessels**

**10.**—(1) The undertaker shall provide the following information to the MMO—

- (a) at least 5 working days before any vessel, agent or contractor engages in any licensed activity the name and function of any agent or contractor appointed to engage in the licensed activities; and
- (b) each week during the construction of the authorised development a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

#### **Equipment and operation of vessels engaged in licensed activities**

**11.**—(1) All vessels employed to perform the licensed activities shall be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and shall comply with sub-paragraphs (2) to (7).

(2) Subject to sub-paragraph (3) all motor powered vessels must be fitted with—

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and
- (d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands shall be installed or used without the prior written approval of the Secretary of State.

(4) All vessels' names or identification shall be clearly marked on the hull or superstructure of the vessel.

(5) All vessels shall exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies shall be in English.

(7) No vessel shall engage in the licensed activities unless all the equipment specified in sub-paragraph (2) is fully operational.

#### **Pre-construction baseline**

**12.**—(1) Any pre-construction baseline report shall take account of any existing environmental data, assessments and reports relevant to the Order limits.

(2) Prior to the commencement of the licensed activities the undertaker shall submit a pre-construction baseline report to the MMO for written approval at least 4 months prior to the start of any licensed activities. No licensed activities shall commence until the MMO has approved in writing the pre-construction baseline report. The form and content of the report, including any additional

environmental monitoring, shall be agreed in writing by the MMO following consultation with Cefas, Natural England and English Heritage.

- (3) The pre-construction baseline report shall include—
- (a) data concerning the location and abundance of any benthic communities within the Order limits;
  - (b) a Phase 1 survey of the intertidal area;
  - (c) a swath-bathymetric survey including a side scan sonar survey including seabed anomalies of archaeological interest and those anomalies subject to exclusion zones and scour/spud marks across the Order limits;
  - (d) data concerning existing fish and shellfish populations and spawning activity in the vicinity of the Order limits;
  - (e) data concerning existing ornithological activity in the vicinity of the Order limits; and
  - (f) a desk based assessment of known and predicted archaeology and paleo-environmental deposits.

(4) In the event that the pre-construction baseline report contains sufficient information regarding the effects of the licensed activities on individual matters listed at sub-paragraph (3)(a) to (e) the MMO shall not require further monitoring to be carried out in respect of that matter.

### **Construction monitoring**

**13.**—(1) During construction the undertaker shall submit environmental monitoring reports to the MMO in accordance with the construction and monitoring programme approved under licence condition 9(1)(a) which shall include—

- (a) if jetting is used for cable installation, the monitoring of suspended sediment concentrations within the jetting area and at a suitable control location;
- (b) measurements of noise generated by the installation of the first four foundations, following which the MMO will determine whether further noise monitoring is required;
- (c) recording of any sightings in accordance with licence condition 9(1)(h) of marine mammals within the marine mammal monitoring zone; and
- (d) ornithological monitoring.

(2) The results of any initial noise measurements provided in accordance with sub-paragraph (1) (b) shall be provided to the MMO within six weeks of the installation of the first foundation piece. The assessment of this report by the MMO shall determine whether any further noise monitoring is required. In the event that the reported noise levels are significantly in excess of those predicted in the environmental statement further pile installation shall only be carried out with the prior written approval of the MMO.

(3) In the event that the installation of the export cable(s) takes place between May and September, bathing water quality shall be monitored and reported to the Environment Agency in accordance with a written protocol agreed in advance of such works taking place. The protocol shall include procedures for setting the bathing water quality baseline, details of the appropriate standards and the steps to be taken in the event that, as a result of the export cable works, bathing water quality falls below the agreed standards.

### **Post construction**

**14.** Post construction the undertaker shall submit environmental monitoring reports to the MMO in accordance with the construction and monitoring timetable approved under licence condition 9(1) (a) which shall include—

- (a) data from sample locations for benthic monitoring;
- (b) monitoring of the intertidal area;
- (c) swath-bathymetric surveys including spud mark monitoring and scour monitoring around the turbine foundations;
- (d) a survey of fish and shellfish populations in the vicinity of the Order limits; and
- (e) ornithological monitoring.

#### **Amendments to approved details**

**15.** With respect to any condition of this Schedule which requires the licensed activities to be carried out in accordance with plans, programmes and reports approved by the MMO, the approved plans, programmes and reports shall be taken to include any amendments that may subsequently be approved in writing by the MMO.

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#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Vattenfall Wind Power Ltd to construct, operate and maintain a generating station in the sea approximately 7.8 kilometres off the coast of Kent together with all necessary and associated development. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants a deemed marine licence for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the generating station and associated development. The deemed marine licence imposes conditions in connection with the deposits and works for which it grants consent.

A copy of the plans referred to in this Order and certified in accordance with article 15 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Canterbury City Council at Military Road, Canterbury CT1 1YW.