

Ms E Dunn
Burges Salmon
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BS2 0ZX

20 June 2011

Dear Ms Dunn,

**Proposed Kentish Flats offshore wind farm extension
Draft Development Consent Order and Explanatory Memorandum**

I refer to your letter dated 3 June 2011 seeking the IPC's comments on the draft Development Consent Order (DCO) and draft Explanatory Memorandum. I set out below the points discussed at our meeting on 9 June 2011.

Draft Development Consent Order

Although we note that at the meeting you explained that a number of the provisions have previously been included in Transport and Works Act (TWA) Orders, you will wish to satisfy yourself that this proposed approach is relevant to the Planning Act 2008 regime. If you consider that these provisions are necessary for this particular project then explanation and justification for this approach should be fully set out in the Explanatory Memorandum.

Article 2 - definition of "maintain"

As we mentioned at the meeting, we consider that this definition is too broad in scope. You confirmed that you would be redrafting this definition.

Article 2 - definition of "the works plan"

You confirmed that you would clarify how many works plans there are and redraft the definition accordingly.

Article 2 (4)

We note that you will check whether the additional wording in the model provision, which has been omitted from this article, is relevant and applicable and should be included.

Article 3 (1)

We suggest that the word "Order" is inserted before "requirements" to reflect the definition in Article 2.

Article 5(2)

We note the very wide scope of what may be permitted by the article. We consider that this, as drafted, is too widely drawn and you should consider whether this description of

works that may be carried out should be moved to Schedule 1 and described as either associated development or ancillary works.

Article 7

We note your explanation at the meeting that the benefit of the Order is to be specific to the named undertaker unless a transfer in accordance with article 7(a) has taken place.

Article 8

At the meeting you confirmed that you did not consider compulsory acquisition powers were necessary in connection with the extinguishment to public rights of navigation. We suggest that explanation and justification for this approach is fully set out in the Explanatory Memorandum. You may also wish to consider and refer to section 120 and Schedule 5 - ancillary matters. We would also point out that revised draft NPS EN 3 paragraph 2.6.175 states that in respect of the extinguishment of public navigation rights, "the IPC should require the applicant to publish any provisions that are included within the terms of the development consent order, in such a manner as appears to the IPC to be appropriate for bringing them, as soon as is reasonably practicable, to the attention of persons likely to be affected by them". We suggest that you may wish to consider how this will affect the drafting of this Article.

Articles 9, 10, 11

The Explanatory Memorandum should explain and justify the need for the additional wording you have included in these Articles, which is not found in the model provisions.

Article 11

Although you explained that this reflects previous provisions in TWA orders, we consider that the drafting of this Article is too imprecise in that the meaning of the words "appropriate" and "promulgated" are not clear. You confirmed at the meeting that you would look again at this wording.

Article 12

We note that you will replace the word "injury" with the word "damage".

Article 15

You are awaiting confirmation from the Crown Estates Commissioners whether they require this provision to be included in the draft DCO.

Schedule 1 Authorised development

You should ensure that the description of the authorised development is consistent with the development which has been assessed in the environmental statement.

Schedule 1 Associated development

We consider that paragraphs 12 and 13 of the Explanatory Memorandum should be more particularly related to the works forming part of this project with appropriate reference to Annex A of the CLG Guidance on Associated Development.

Part 3 Requirements

Requirement 6 Archaeology

You confirmed that you will include in this requirement reference to an implementation timetable.

Requirements 6 to 9

We understand that you will clarify the drafting of requirements 6 to 9 and provide a fuller explanation in the Explanatory Memorandum.

Requirement 8

You confirmed that you will explain in the Explanatory Memorandum that this refers to the associated development.

Requirement 10 - Decommissioning

We consider that there needs to be a fuller explanation of this Article in the Explanatory Memorandum.

We suggest you may wish to include the wording "the written decommissioning programme shall satisfy the requirements of section 105 (8) of the Energy Act 2004"

Requirements where subsequent approvals are needed, for example, Safety Management 5 and Archaeology 6

These are matters which you will need to discuss and agree with the appropriate authority such as the LPA or the MCA. In practice, such authorities may prefer to approve the relevant schemes in place of the Commission, rather than merely being consultees.

General points

You confirmed that you consider that no compulsory acquisition powers will be necessary and that the order would not be drafted in the form of a statutory instrument. You may also like to consider the reference in revised draft EN 3 to monitoring at paragraph 2.6.51 and whether you may wish to include such a monitoring requirement

Deemed Marine Licence

Schedule 2

Part1, Para 1

The definition of authorised deposits should refer to article 2(4)

The definition of licensed activities should refer to para 2(1)(a) and 2(1) (b)

The definition of undertaker should refer to article 7(2)

Part 2

Para 1 (3) - the word "authorised" should be deleted

Para 1(6) - you may wish to consider adding the words "At least [] days ..." at the beginning of the paragraph.

Para 1(7) - you may wish to ensure that it is clear who has responsibility for issuing the Notice to Mariners

Para 1(9) (b) - you may wish to ensure that it is clear who has responsibility for "establishing" the required lighting/markings.

Para 2 (2) - we suggest that "where necessary" is more precisely defined and "best environmental practice" is also defined.

Para 4 (b) - we suggest that if it is not possible to comply with the agreed programme proposals for amendments to the programme should be submitted to the MMO for approval

Para 10 - we note that at the meeting you confirmed that you would consider redrafting this provision.

Protective provisions - we note from the meeting that you confirmed that such provisions may not be necessary.

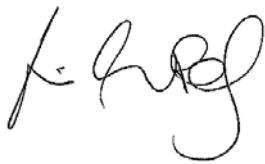
Explanatory Memorandum

Regulation 5(2)(c) of the APFP Regulations and IPC Guidance Note 2 states that “any” divergences from the model provisions should be included within the Explanatory Memorandum. Paragraph 24 of IPC Guidance Note 2 has been copied below for your information:

“The draft Order must be accompanied by an Explanatory Memorandum (Reg 5(2)(c)) explaining the purpose and effect of each provision in a draft Order (explaining, for example, why it is considered necessary) and any departures from the model provisions. In addition to including any comments on issues mentioned in paragraphs 21 to 23 above, the Explanatory Memorandum should identify relevant precedents for non-standard provisions.”

Should you have any queries in relation to the above or any other matter, please do not hesitate to contact me.

Yours sincerely



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Cc Göran Loman - Vattenfall

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