

# **Vattenfall Wind Power Ltd**

## **Thanet Extension Offshore Wind Farm**

Appendix 9 to Deadline 3 Submission: Written  
Summary of Vattenfall's Oral Case put at the Issue  
Specific Hearing 3 and Annexes

Relevant Examination Deadline: 3

Submitted by Vattenfall Wind Power Ltd

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Revision A

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## 1 Introductory Remarks

- 1 This note summarises the Applicant's case as presented at the Issue Specific Hearing 3 held on 19 January 2019 at the Discovery Park, Ramsgate Road, Sandwich (the "ISH3").
- 2 The note follows the structure of the Agenda for the Issue Specific Hearing on 19 January 2019 ("the Agenda"). Where an item was discussed at the IS Hearing that was not on the Agenda it has been marked as an "Additional Agenda Item" within this document.

### 1.2 Introduction of the Participating Parties

- 3 Scott Lyness of Counsel (Landmark Chambers) spoke on behalf of the Applicant.
- 4 Oral representations were made on behalf of the Applicant by the following:
  - Scott Lyness (SCL);
  - Daniel Bates (DBA);
  - Sean Leake (SEL);
  - Sandra Hayes (SH);
  - Ian Baker (IB);
  - Sean Sweeney (SS);
  - Dr Roger Buisson (RB);
  - Duncan Watson (DW);
  - Sally Kazer (SK); and
  - Ryan McManus (RM).

## 2 Agenda Item 2 - Submissions at Deadline 1

- 5 This agenda item concerned the submission of new documents at the past two Deadlines.
- 6 **The ExA explained that before considering formally whether to accept those documents, this is an opportunity for anyone with any concerns over those documents to raise these concerns.**
- 7 No concerns were raised by interested parties (IPs).
- 8 ScL explained that Appendix 45 to the Applicant's Deadline 1 Submission confirmed that the Applicant has removed 'Option 2' from the Project envelope. At the Deadline 2 Submission the Applicant amended the relevant documents to reflect the removal of Option 2 and ScL sought to confirm there were no procedural concerns in relation to the withdrawal of that Option 2. The Panel confirmed that at this stage they are content but caveated this that IPs over the hearings will have the opportunity to raise any concerns over this withdrawal.

### 3 Agenda Item 3 – Construction Effects at Sea

#### 3.1 a) Foundations and trenching: methods, arisings and materials disposal

- 9      **The ExA requested confirmation that the apparent discrepancies identified within the Annex B to Appendix 1 of the Applicant's Deadline 1 Submission (PINS Ref REP1-023) (Project Description audit) in relation to foundation and trenching volumes were correct. The ExA elaborated that Table 8 of Annex B seemed to identify that some of the discrepancies between the EIA and the audit note were of an order of magnitude and requested confirmation that this was correct.**
- 10     ScL responded that in relation to certain aspects, in particular disposal volumes, the Applicant has noted that this needs to be reviewed within the DCO to be brought in line with Annex A to the Deadline1 submission (action).
- 11     It was further clarified that this issue related to Table 8 of Annex B, and an Action Point was taken for the Applicant to review the document and provide any clarifications. This is therefore further addressed in Appendix 1 to this Deadline 3 submission in response to the ISH3 Action Points document (EV-019). In brief the Applicant can confirm that the figures presented are accurate and the transcription errors identified do not materially alter the findings of the EIA.

## 4 Agenda Item 4 – Construction and Operational Effects on Land

### 4.1 (a) Landfall and cable route options and construction methods

12 The following points present both the oral summary of the Applicant in response to ExA questions and points raised by IPs. In order to maintain readability reference is also made to the oral summaries made by IP before providing summaries of the oral representations made in response.

13 **The ExA requested any IPs to raise matters of relevance to the landfall and cable route options.** AM (KWT) said that as they have stated in their Written Representation, KWT's core issue is the onshore cable route crossing numerous environmental designations. KWT do not believe that the avoidance recommendation has been followed and do not believe that alternatives have been considered in sufficient detail.

14 **The ExA confirmed that whilst recognising the concerns raised with regards site selection it is important to note that the panel cannot consider a landfall that is not "on the table" (alternative landfalls).** The ExA therefore confirmed that there were two points questions for KWT.

**To the degree that their concerns have been raised, is it the position of KWT that their position is that NPS policy tests have not been made and if so, is it the view of KWT that additional mitigation actions need to be offered or adopted, or, alternatively,**

**Or is the view of KWT that the Application ought not to be granted for reasons.**

15 AM (KWT) explained that KWT maintain an in-principle objection to crossing designated sites, including RAMSAR and SSSI as well as outstanding concerns about the surveys carried out. VG (KWT) added that KWT do not believe that comparable surveys were carried out for the two options considered, and also said that the provision of ecological information in the lead up to the submission was "poor" and questioned the standard of the botanical and invertebrate surveys put forward.

16 **The ExA confirmed that in summary there does not appear to be any additional survey work or mitigation that can be done.**

17 VG stated that there is not comparable surveys done for the two options, KWT believe there may be long term impacts on certain sections of the designated sites.



- 18 **The ExA noted that the saltmarsh in the foreshore has been disturbed previously by the Nemo Link cable and the existing Thanet Offshore Wind Farm (TOWF). The ExA requested KWT to identify their observations about those crossings and asked whether their view is that these crossings caused damage which now needs to be avoided. The ExA asked for some suggestion of lessons that could be learnt, or methodologies that could be adopted by the Applicant.**
- 19 KWT explained that the previous work for Nemo was not in line with what KWT would have hoped to see and added that the "cumulative effects will increase and there are impacts which we need to be considered which have been damaging on the sites".
- 20 It is KWT's position that there are ongoing issues with the existing cable and VG expressed concern over the resilience of the site itself and that the impacts are not all temporary, as there is ongoing maintenance work required.
- 21 The Applicant can confirm that the mitigation measures employed during construction (seasonal restriction) will be employed during planned O&M works and as such operational phase works will not impact the features of the SPA.
- 22 **The ExA noted that the Thanet Cable Replacement Project was raised in KWT's recent submissions and the Applicant has confirmed this has been withdrawn.**
- 23 DBA provided background on this Project and explained that the marine license application had been withdrawn and so as a Project it should not be considered as part of the cumulative impact assessment (CIA). The issues with the cables can be dealt with through repair rather than replacement.
- 24 **The ExA asked the Applicant if it now appears that the existing offshore cable will be able to continue through to decommissioning or that there may need to be intervention.**
- 25 DBA confirmed that the license was withdrawn precisely because it is not expected to be needed.
- 26 An agreed action was taken by the Applicant to provide a written submission confirming the withdrawal of the TOWF cable replacement project.
- 27 AM (KWT) confirmed that this is reassuring but KWT are aware of Round 4 project currently underway and they do not want to set a precedent of cables going through protected areas.

- 28 AS (NT) said that National Trust support KWT's position. The Panel asked AS what the view of National Trust is with regards the landfall location and what the consequence ought to be, specifically what policy has been breached and if so what mitigation could be put in place or alternatively should the project not be granted consent. AS explained that the Trust maintain an in-principle objection and their additional concerns relate specifically to the site selection process. The NT consider that the balance has not been made clear.
- 29 **The Panel provided the Applicant with the right of reply.**
- 30 ScL stated that the approach to site selection and landfall options had been set out in the ES (Chapter 4). ScL reiterated that it was necessary to establish the policy basis for these objections, and this had not been done by KWT. The Applicant understands from KWT's representations that they accept that EN-3 does not contain a general requirement to consider alternatives. EN-3 advises that an assessment of the effects of installing cable across the intertidal area should include, where relevant, information about which should include information about alternative landfall sites and cable installation methods that have been considered, but does not say that where a "better" option exists it must be selected (see paragraph 2.6.81).
- 31 There is guidance in EN-1 (paragraph 4.4.1) which advises that the relevance of alternatives is a matter of law, detailed guidance on which falls outside the scope of this NPS. It goes on to say that from a policy perspective the NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. It then adds (paragraph 4.4.2) that an ES should include information about the main alternatives studied, which is not an issue here. Then it refers to the possible need to consider alternatives under specific legislation, in particular the Habitats Directive; and the Applicant does not understand there to be any allegation that this requirement is engaged in this case. ScL explained that the Applicant's understanding is that there are no fundamental outstanding objections from Natural England on landfall matters.
- 32 **The ExA noted with regret that Natural England were not in attendance as they would have been able to assist as to where they disagree with the Applicant's "no adverse effects" conclusion.**
- 33 ScL confirmed the Applicant's understanding of NE's position on landfall matters. He added that paragraph 4.4.2 also advises that there may be a specific policy requirement to consider alternatives and mentions other sections including section 5.3.

34 There is a reference at paragraph 5.3.7 which advises “as a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.4 above)”. In this case the Applicant’s position is that significant harm to biodiversity would be avoided and again it does not understand there to be any allegation from KWT or other party that such harm would arise (or therefore that the Applicant had failed to avoid significant harm through the consideration of reasonable alternatives). Further, the policy did not require that the “best” option be selected.

35 **The ExA confirmed two actions to arise from this agenda item:**

- **For National Trust and KWT: to set out clearly grounded policy reasons as to why there is either a requirement for additional mitigation or reasons for refusal.**
- **For the Applicant: to engage with Natural England by Deadline 3, through the SoCG process, to clarify the relevance of SSA within HRA and to clarify whether they disagree with the conclusion of no adverse effects.**

36 ScL explained that the SoCG will deal with SSA and the Panel confirmed that this could include a statement to clarify that any residual concerns have now been addressed.

37 The Panel made a procedural decision to request that Natural England to review the audio of this hearing, and where matters are put to them in their absence they should then submit a written response for Deadline 3.

ScL added that the Applicant will endeavour to progress the SoCG.

## **4.2 (b) Construction and laydown areas**

38 This item was included for the benefit of Kent County Council who are not in attendance, and so this was deferred to the second set of Examining Authority Written Questions.

## **4.3 c) Ground investigation, management of contaminated land and ground conditions in and adjacent to Pegwell Bay Country Park (PBCP), and associated effects to water course and marine water column**

39 **The Panel raised the technical feasibility of HDD passing through ground including landfill, the management and monitoring of this and asked, taking into account that there is distinct preference for HDD, whether this is a clearly technically feasible option.**

- 40 ScL explained that following the withdrawal of "Option 2", the Applicant wishes to retain both HDD and trenching within the Project envelope. Following the receipt of written representations, the Applicant recognised concerns over the permanent loss of saltmarsh and was content to remove this option, but did wish to retain some flexibility in the delivery of the landfall development.
- 41 There is existing geotechnical data within the Ground Conditions, Land Use and Flood Risk chapter which presents a robust characterisation of the landfill for assessment. Whilst the Applicant has not been able to conduct site specific surveys, there is sufficient information available to ensure HDD will not cause any adverse effects on any European site, having regard to mitigation including the CoCP and Saltmarsh Mitigation and Monitoring Plan (SMMP) which would allow for pre-construction site investigations as well as monitoring. The Applicant regards HDD as a technically feasible option however there were other factors which meant that the Applicant wished to retain Option 3.
- 42 **The ExA summarised that the Applicant has not had detailed pre-contractual conversations with HDD contractors and so does not have the necessary information about cost and deliverability.**
- 43 ScL concurred that the final decision of which option to adopt will need to consider time, cost and contractual discussions.
- 44 **The ExA asked the Applicant whether, if the Panel were persuaded that trenching should be dropped from the envelope, this could render the project undeliverable.**
- 45 SH outlined that there are currently two options being considered by Vattenfall for the export cable landing methodology which would lead the cable to underground transition joint bays with Pegwell Country Park:
- Option 1: Cables installed by Horizontal Directional Drilling (HDD) underneath the sea wall to exit points at least 100 m seaward; and
  - Option 3: Cables installed in an open cut trench through the existing seawall and buried with reinstatement of the seawall to pre-construction conditions.

46 The Applicant has held discussion with HDD contractors and specialist consultants, which confirm that based on the information available at the current time, HDD should be possible. However, even without considering the make-up of the landfill material which could hinder HDD, the detailed natural make-up of the ground below may mean that HDD cannot be guaranteed. This may be determined prior to works taking place but may not be discovered until HDD works are in progress. The Applicant is aware of situations relating to both onshore HDD and landfill HDD that have failed. These projects have fallen back on open cut methodology. Vattenfall therefore require both options to be retained.

47 **The ExA asked for a note on why the Applicant wishes to retain optionality.**

48 The Applicant confirmed that this would be undertaken, and this forms an Action Point which is addressed in Appendix 1 of this Deadline 3 submission.

49 **The ExA asked for a Section 53 update.**

50 ScL explained that the Applicant has held positive discussions with landowners over the last few weeks. The Applicant is finalising contracts and, subject to approval of the method statement, expects this to take place in a few months. The Applicant anticipates that this information could then be shared with stakeholders. It is doubtful that it will be available for consideration during the Examination period but it could be used to inform the implementation of the mitigation plan, and the Applicant's view is that there is sufficient information for the Panel to conclude that the proposed options are feasible and acceptable.

51 **The ExA explained that if KWT believe the information available is not sufficient, they need to make this clear and give reasons by Deadline 3.**

52 ScL added that the SMRMP was revised and resubmitted for Deadline 2. Following ongoing discussions with Natural England, this will be further revised.

53 **The ExA clarified that Natural England need to specify in their response whether the available characterisation is sufficient in their view or whether further information needs to be made available to the Panel during the Examination timetable.**

#### **4.4 (d) Interface with and crossing of Nemo cable alignment**

54 **The ExA confirmed that Nemo's most recent written representation raises concerns with regards the need for heavy vehicles to cross Nemo. The ExA asked for consideration of crossings/bridge structures to aid facilitating the crossing.**

55 ScL confirmed in brief that it was possible, and requested IB provide further detail.

- 56 IB explained that the NEMO HVDC interconnector crosses the proposed construction access at Work No 6. At this point, the interconnector cables are surface laid and protected by an above ground berm of approximately 1.2m in height. To access to the temporary construction compound and cable route work areas, it is necessary to cross the NEMO cable berm.
- 57 IB presented that while 4x4 vehicles have been observed to use the berm as a crossing point to access the Country Park from this location, the asset owner has indicated that this berm is not suitable for heavy construction traffic.
- 58 IB stated that in order to ensure construction traffic can access the landfall works area, it will be necessary to provide suitable protection to the NEMO cable berm to ensure the assets are protected.
- 59 IB noted this situation is common with all types of below ground services, where integrity of business critical assets needs to be maintained. This can be related to cable circuits, but can extend to water or discharge pipes from industrial processes.
- 60 IB relayed that as the NEMO assets are surface laid covered with an above ground berm, normal protection methods such as metal plating will not be suitable. In this case, a temporary crossing arrangement similar to those employed to maintain a construction access routes across watercourses is envisaged to ensure the integrity of the NEMO assets is maintained.
- 61 IB highlighted that the Applicant has instructed consultants to develop crossing methodology proposals for construction vehicles to ensure they can access the landfall construction area without adversely impacting on the integrity of the Nemo cable circuit. To establish the necessary height for a bridge to cross the NEMO berm, some temporary modification of the land profile either side of the crossing point will be needed to ensure suitable access and egress across the berm crossing point.
- 62 **The ExA identified that there is also a possible need to cross buried cables. This should be covered within protective provision if it hasn't already. The Panel would like to see progress on the technical thinking and how this may be secured.**
- 63 ScL confirmed that this is being considered in the context of protective provisions within the draft Order. (Action to raise that PPs are advanced at ISH7.)
- 64 **At their most recent unaccompanied site inspection, the Panel noted that heavy tractor vehicles have clearly crossed the berm. The Panel would like to clarify Nemo's position on what vehicles are allowed, as the Applicant has suggested lighter vehicles as a potential solution.**

65 An Action was taken to provide an update on the agreement between Nemo and the Applicant.

#### **4.5 (e) Crossing of Minster Stream and A256**

66 This topic was deferred to the second set of Examining Authority Written Questions.

#### **4.6 (f) Any other requirements for crossings including trees and scrub**

67 This topic was deferred to the second set of Examining Authority Written Questions.

#### **4.7 (g) Substation construction**

68 This topic was deferred to the second set of Examining Authority Written Questions, as Ramac were not in attendance.

#### **4.8 (h) Grid connection and interface with NGET assets**

69 **The Panel would like to see greater certainty over connection to Richborough.**

70 Action for the Applicant to include a statement within the SoCG illustrating that technical problems are solved or nearly resolved, and that the degree to which these flow to land related matters has also been resolved.

## 5 Agenda Item 5 – Biodiversity and Habitats (HRA) Considerations

### 5.1 (a) Marine biodiversity and habitats effects, mitigation and monitoring

- 71 **The ExA asked the Applicant to provide a summary of the RIAA, and to focus on those area where disagreement remains.**
- 72 The Applicant offered to provide an update on the RIAA before then going through individual topic areas.
- 73 ScL began by explaining that the Report to Inform Appropriate Assessment (RIAA) was reissued at Deadline 2. It particularly dealt with: (a) further clarity on Sweetman 2, whereby accidental pollution was screened back in and no adverse effect on integrity was concluded; (b) updates in relation to the proposed withdrawal of "Option 2"; (c) additional consideration of French authority representations; (d) clarification regarding the collision risk modelling in relation to ornithology.
- 74 The revised RIAA is currently with Natural England for review. No other IP raised any initial comments.
- 75 **The ExA highlighted that the Crown Estate are conducting a plan level HRA which ongoing.**
- 76 ScL confirmed that it is the Applicant's understanding that this will be published in the summer. He added that as a starting point there is nothing in principle to prevent a project such as TEOW coming forward in advance of any plan-based HRA. To the extent that the HRA considered TEOW, it would plainly be informed substantially by the highly detailed HRA work carried out for this project, and at this stage there was no suggestion that the plan-level HRA would depart from the assessment which had already been done for the project. However if any issues of divergence did arise, then they could addressed, if not through the examination process, by way of further comments being provided to the Secretary of State if necessary.
- 77 **The ExA asked whether the plan level HRA may reach a different conclusion.**
- 78 ScL explained that the Applicant does not believe there to be a significant risk of this happening, as the Applicant understands that the Project HRA is being fed into the work undertaken.
- 79 **The ExA highlighted the discrepancy the maximum capacity described the Applicant and the Crown Estate.**



- 80 ScL suggested that this be considered at the later ISH on Thursday, where the Crown Estate will be attendance. The Panel concurred.
- 81 **With regards RSPB, the Panel explained that their written representation stated that they wished to have no further involvement.**
- 82 ScL confirmed that it is the Applicant's understanding that RSPB do not wish to take an active role now or in the future.
- 83 **The ExA said that it would assist if SoCG process could be concluded.**
- 84 ScL explained that the Applicant has asked RSPB if they would like to either conclude the SoCG or defer to NE, and did not receive a response.
- 85 Action for the Applicant to make a final request to the RSPB for the conclusion of a SoCG (this action was superseded by later correspondence from the ExA).
- 86 **The Panel asked to talk through the relevant SoCGs that are being negotiated with Natural England.**
- 87 ScL confirmed that discussions with Natural England are ongoing and that the Applicant is preparing to draft a set of revisions to the SoCG. There are two overarching issues being discussed:
- Figures presented for collision risk: the Applicant is producing a clarification note including further information requested by Natural England relating to greater variation in the CRM input parameters; and
    - Discussions over post-consent monitoring: the Applicant has agreed with Natural England to submit a draft In Principle Ornithological Monitoring Plan (IPOMP) specifically for ornithology at Deadline 3. The Applicant is in discussion with Natural England as to what this will cover but does not anticipate any in-principle objection.
- 88 SL clarified that there is no proposal for any other IPMP. It has been agreed with Natural England that the link between geophysical monitoring and the biogenic reef plan will be made clearer within the DMLs in order to address concerns about the MCZ and specifically around cable protection within the MCZ.

## (i) Marine Mammals

### Southern North Sea cSAC

- 89 **The ExA asked SK about the Southern North Sea cSAC/SCI, to ascertain if agreement had been reached with Natural England on the conclusion of no Adverse Effect on Integrity (AEoI) alone and in-combination.** SK confirmed that the updated Report to Inform Appropriate Assessment (RIAA), together with the Site Integrity Plan (SIP), had been proved at Deadline 2 as requested. SK confirmed that the issue had been discussed during a call with Natural England (NE) on 14 February 2019, when it was confirmed that Natural England would confirm their position by Deadline 3.
- 90 ScL explained that a draft SIP was submitted at Deadline 2 and is with Natural England for review. LS (MMO) confirmed that they are also reviewing the SIP and noted that it is now included within the dML - although the MMO considered that the precise wording of that may evolve.
- 91 **the ExA said that by Deadline 3 it would useful to have the SIP mentioned within the SoCG.**
- 92 SK contacted Natural England on 20th February to request confirmation that Natural England would be responding by Deadline 3.
- 93 SK confirmed that the Applicant is expecting feedback by Deadline3.
- 94 **The ExA requested a response from Natural England on this topic by Deadline 3.**
- 95 The ExA asked a question regarding a condition in the draft DCO, in relation to underwater noise monitoring required during installation of the first four piles. Specifically, Natural England have requested that the existing draft condition be amended to make it explicit that, should the noise monitoring reveal concerns, the MMO have powers to call for a cessation to piling. SK confirmed that the matter had been discussed on the 14 February call with NE. SK highlighted that the MMO had existing powers that would enable this to occur, without the need for additional wording within the dML.

- 96 As regards further noise mitigation (in relation to construction noise affects), this was recorded as being likely to be raised at ISH7. Natural England have asked for it to be secured through a condition in the dML that piling will cease if noise effects are deemed to above those assessed within the ES. ScL explained that the Applicant does not accept this as necessary, as it could be covered in the approval process for the MMMP; and in any event the Applicant's understanding was that if any concerns were raised over piling to be ceased, this could be addressed through existing MMO powers.
- 97 SK confirmed that the MMO have the existing generic power to do this. LS (MMO) asked for this to be picked up at ISH7. She accepted that it is up to MMO to intervene if monitoring shows above ES assessment but there are other steps which could be taken to secure that this does not happen in the first instance. Natural England's role would be to assist in securing mitigation to deal with this.
- 98 **The ExA request the MMO to provide the legislative basis for their powers. It is noted that the ExA expects this issue to be revisited at ISH7.**

## ii) Offshore Ornithology

- 99 **The Examining Authority (ExA) panel structured their questions based on working through those European and Ramsar sites listed in the draft SoCG with Natural England (PINS Ref: REP1-039; Appendix 14 to Deadline 1 Submission; Title: Statement of Common Ground – Natural England Offshore Ornithology).**
- 100 RB explained that the Applicant has produced a clarification note in relation to in-combination effects; Natural England has agreed that there is no statistically significant material contribution from TEOWF and accept that the issue arise from existing consents which are not matter for us.

## Outer Thames Estuary SPA

- 101 RB explained that the position reached with Natural England, which would be confirmed through the submission of an updated SoCG for Deadline 3, was that there was agreement that there was no adverse effect on integrity on the red-throated diver interest feature of the Outer Thames Estuary (OTE) Special Protection Area (SPA) from the project alone.

- 102 RB noted that with regard to in-combination effects the Applicant considered that there was no adverse effect on integrity on the red-throated diver interest feature of the OTE SPA. This was stated in the Revised Report to Inform Appropriate Assessment (Paragraphs 12.4.11 to 25 of PINS Ref REP2-018 & 019; Title: Appendix 21 to Deadline 2 Submission: Report to Inform Appropriate Assessment [on PINS website in two parts]).
- 103 RB explained that the advice received from Natural England during the most recent discussions on the SoCG (in the period 11<sup>th</sup> to 18<sup>th</sup> February 2019) was that Natural England considered that *"it is not possible to rule out an adverse effect on the integrity of the red-throated diver population of the Outer Thames Estuary SPA in-combination with other plans and projects. However, we agree that the project does not make a significant contribution to the in-combination displacement totals."* The updated SoCG reflecting this position will be submitted for Deadline 3.
- 104 RB explained that the Applicant has submitted an in-combination paper, which was discussed through an evidence plan study, to sit alongside in combination assessment in the EIA and in parallel to the in-combination common data set for RTD.
- 105 **The ExA asked whether other offshore wind farms at the planning stage will affect this outcome.**
- 106 RB explained that the other hearings ongoing are outside of the Thames Estuary SPA.
- 107 RB noted that with regard to in-combination effects the Applicant considered that there was no adverse effect on integrity on the red-throated diver interest feature of the OTE SPA. This was stated in the Revised Report to Inform Appropriate Assessment (Paragraphs 12.4.11 to 25 of PINS Ref REP2-018 & 019; Title: Appendix 21 to Deadline 2 Submission: Report to Inform Appropriate Assessment [on PINS website in two parts]).
- 108 RB explained that the advice received from Natural England during the most recent discussions on the SoCG (in the period 11<sup>th</sup> to 18<sup>th</sup> February 2019) was that Natural England considered that "it is not possible to rule out an adverse effect on the integrity of the red-throated diver population of the Outer Thames Estuary SPA in-combination with other plans and projects. However, we agree that the project does not make a significant contribution to the in-combination displacement totals." The updated SoCG reflecting this position will be submitted for Deadline 3.
- 109 **The ExA flagged this is a matter where Natural England need to provide a specific response with conclusion over this and what 'no material effect' means.**

- 110 The Applicant has since agreed with Natural England that the contribution made by Thanet Extension is inconsequential. This is recorded within the Natural England SoCG.

#### **Thanet Coast and Sandwich Bay SPA**

- 111 ScL confirmed that matters have progressed following the withdrawal of "Option 2". DW added that the Applicant is expecting an update to the SoCG to agree no adverse effect.
- 112 **The ExA identified again that Natural England need to provide a response on this.**
- 113 AM (KWT) explained that KWT believe that either method will cause temporary disturbance on feeding and roosting birds on site.
- 114 **The ExA replied that if KWT's view is that Project, either alone or in combination, will have an effect on integrity then this needs to make clear at Deadline 3 with reasons.**
- 115 ScL added that it would be useful for this submission to include reference to why the proposed mitigation secured in the CoCP and the OLEMP would not be sufficient.
- 116 KWT agreed to take this forward and work through concerns regarding mitigation. ScL highlighted that the OLEMP has been agreed with NE.

#### **Flamborough and Filey Coast SPA**

- 117 RB explained that the position reached with Natural England, which would be confirmed through the submission of an updated SoCG for Deadline 3, was that there was agreement that there was no adverse effect on integrity on the gannet and kittiwake interest features of the Flamborough and Filey Coast (FFC) SPA from the project alone.
- 118 RB noted that with regard to in-combination effects the Applicant considered that there was no adverse effect on integrity on gannet and kittiwake interest features of the FFC SPA. This was stated in the Revised Report to Inform Appropriate Assessment (Paragraphs 12.4.26 to 34 of PINS Ref REP2-018 & 019; Title: Appendix 21 to Deadline 2 Submission: Report to Inform Appropriate Assessment [on PINS website in two parts]).

- 119 RB explained that the advice received from Natural England during the most recent discussions on the SoCG (in the period 11<sup>th</sup> to 18<sup>th</sup> February 2019) was that Natural England considered that *“it is not possible to rule out an adverse effect on the integrity of the kittiwake population of the Flamborough & Filey Coast SPA in-combination with other plans and projects. However, we agree with the applicant the effect of the additional predicted mortality from Thanet Extension will not materially alter the significance of the overall in-combination mortality figure.”* The updated SoCG reflecting this position would be submitted for Deadline 3.
- 120 Mr Sweeney explained that the Applicant has been in discussion with Natural England about the collision predictions for kittiwake that result from the modelling that had been carried out. Mr Sweeney explained that Natural England were seeking to receive Thanet Extension alone predictions that were based on modelling using a more precautionary range of values for model input parameters. During the most recent discussions on the SoCG (in the period 11<sup>th</sup> to 18<sup>th</sup> February 2019) it had been agreed that the Applicant would prepare a clarification note that brought together the existing model runs with those that were based on Natural England's preferred range of values for model input parameters. The updated SoCG submitted for Deadline 3 will record the extent to which agreement has been reached.

**RB explained that the RIAA included a tiered approach including Hornsea Project THREE and Norfolk Vanguard, using the available predictions.**

#### **St Abb's Head**

- 121 St Abb's Head: action for the Applicant to consult SNH.

#### **iii) Fish and Shellfish Ecology**

- 122 No representations were made on this topic.

#### **iv) Benthic Ecology**

#### **Thanet Coast SAC**

- 123 SL explained that this issue will be addressed within the SoCG by Deadline 3, as the cable exclusion zone has been agreed. The chalk reef is outwith the SAC and the data collected by the Applicant indicates that there is no need to microsite at this stage.

- 124 AM (KWT) raised that their written representation contained concerns regarding anchor placements and asked if the Applicant has conducted any further surveys. SL confirmed that no additional characterisation surveys have been conducted since application. SL explained that the chalk reef is not an ephemeral feature and so it is not necessary to make a commitment not to anchor within this area.
- 125 AM replied that if temporary damage to the chalk can be avoided that would be advantageous. JP asked what KWT to clarify what they would like the Applicant to do. JH (KWT) suggested a condition within the DMLs that if chalk is found, it will be avoided. SL confirmed that the Applicant does not plan to include such a condition; there is a parallel condition for the biogenic reef because this it is ephemeral and can appear in pre-construction. Chalk habitat will not suddenly appear. KWT confirmed that they have no underlying concerns about the data.

#### **v) Marine Conservation Zones**

- 126 With regards cable protection within the MCZ, SEL explained that Natural England would prefer this to be excluded but where this is required they have requested geophysical monitoring. They have also requested that disposal material to retain as close as practicable for MCZ: this has been discussed with Natural England and the Applicant is open to this within reason. There is already a condition for disposal; the Applicant is awaiting named disposal sites and there is ongoing discussion with Cefas over how to present this.
- 127 **The ExA asked if the Applicant could submit a single document summarising all monitoring commitments.**
- 128 SL explained that as the Project is an extension the Applicant has sought to keep monitoring commitments focussed on specific area, which are outlined within the DML; however, the Applicant is content to provide such a document. This document is included at Appendix 48 of this Deadline 3 submission.

- 129 As regards the Goodwin Sands pMCZ, AM (KWT)) highlighted there could be a temporal overlap between the export cable works at Thanet Extension and the DHB Dover Western Docks Revival, the dredging for which is due to be completed by September 2020, before works at Thanet Extension are expected to start. Ryan McManus responded, stating that the DHB project had been included within the Cumulative Effects Assessment Annex (PINS Ref APP-039) and was screened out due to the lack of temporal overlap between the project and Thanet Extension. It was noted that there was a high level of confidence in this assessment due to the level of information about the project that was available in the public domain, with the project having undergone an EIA and having now been consented. The assessments undertaken for Thanet Extension have considered the best available information on the project and have not factored in contingencies should other projects experience delays.
- 130 **The ExA stated that two projects within the Goodwin sands pMCZ were clearly geographically close, and though not temporally concurrent, were temporally close, and asked for information on any spatial overlap between the projects.**
- 131 RM confirmed that the DHB dredging project is located in the southern part of the Goodwin Sands pMCZ, whereas the Thanet Extension cable corridor overlaps a comparatively much smaller section in the north of the site, and that there is no spatial overlap between the projects. It was noted that the EIA for the DHB project incorporated a cumulative assessment, within which Thanet Extension was not considered. RM also highlighted that the MMO undertook an assessment of the potential impacts of the DHB project on the Goodwin Sands pMCZ following the site's reclassification from rMCZ, as detailed in the consent decision letter for the project. This assessment identified that there would be 'no significant risk' of hindering the conservation objectives of the pMCZ.
- 132 **Action: LS (MMO) to confirm any update on the dates of the Dover Docks Project and a plan to show geographical positions.**
- 133 **The ExA requested that the Applicant provide a plan illustrating the locations of the two projects as part of the Applicant's submission to Deadline 3.**
- 134 This is included as Annex B to Appendix 1 to this Deadline 3 submission.
- 135 ScL explained that the draft Order contains a commitment to focussed post construction monitoring of the biogenic reef and the saltmarsh and will include offshore ornithology, because of the information from the existing TOWF has allowed the Applicant to concentrate detailed monitoring where it will be most valuable. The Applicant will respond to any specific representations made at Deadline 3.



## **vi) inter-tidal habitats – saltmarsh**

- 136 With regards inter-tidal habitats, ScL reiterated that Natural England's key concerns were in relation to Option 2, and they are in the process of reviewing the updated SMMP. RS asked Natural England and Kent Wildlife Trust to provide a view by Deadline 3.

### **Thanet Coast and Sandwich Bay RAMSAR**

- 137 ScL explained that the Saltmarsh Mitigation, Reinstatement and Monitoring Plan was under discussion and review, with a view to closing this off by Deadline 3 with Natural England.

## **6 Agenda Item 6 – Any other Construction and Environmental Considerations**

138 No representations were made on this topic.

## 7 Agenda Item 7 – Procedural Decisions

- 139 Regarding the Applicant's submission of documents changing submission documents and in relation to landfall Option 2, the ExA has considered both sets of changes and has taken procedural decision that those documents are accepted for Examination purposes.
- 140 The Panel reiterated that Natural England should listen to the recording of the hearing and respond on all matters directed to them by Deadline 3. In doing so, they should insert their observations into existing documents including SoCG where possible, and then produce a separate written representation for Deadline 3 advising the Panel on each of the points raised.
- 141 This decision will be put into writing. All comments on these submissions from Natural England will be made at Deadline 4.

## 8 Agenda Item 8 - Review of issues and actions arising

142 The following actions from ISH3 were collated:

- The Applicant: to check the figures within Annex B to Deadline1 submission (REP1-023) with particular reference to table 7, to ensure these are accurate.
  - SCL reiterated that the disposal volumes to be updated within the DCO as part of this propose.
  - **The ExA highlighted that the original figures were around a factor of 5 smaller so the Panel are seeking to clarify that this update is correct and reflected within the ES assessment.**
- The Applicant: With regards the TOWF Cable replacement project, to provide confirmation that this Project is no longer planned.
- NT and KWT: to set out policy basis to objection to site selection conclusions. The Applicant to ensure written summary includes their submissions on this.
- The Applicant: to use the SoCG process to discuss the SSA implications for HRA purposes with Natural England.
- The Applicant: to produce a note on landfall options confirming the basis for need to retain optionality. This can be appended to the written summary of oral submissions.
- The Applicant: With regards the Nemo Link cable crossing, to produce a document summarising the crossing solutions progress, summarising technical progress and the options for securing, and whether this needs to be within a certified document or on the face of the Order. The SoCG is to include the nature of vehicles currently crossing the berm.
- The Applicant: to return to RSPB to try and conclude the SoCG process [this has been superseded following correspondence from the ExA].
- KWT: to document concerns relating to bird species in the intertidal zone, having regard to the proposed mitigation.
- Applicant and Natural England: to progress SoCG matters including the SIP and to clarify the HRA position following discussions with the Application, and whether there is any adverse effect on integrity alone or in combination for any site or feature.
- MMO: to confirm preferred SIP condition wording.
- KWT: With regards the Thanet Coast and Sandwich Bay SPA, to provide a summary of saltmarsh concerns.

- The Applicant: to provide a single document on post-construction monitoring similar to, or integrated within the Schedule of Mitigation.
- MMO: to provide clarification of the potential temporal overlap with dredging in association with the Dover Western Docks Revival project.
- The Applicant: to provide a plan to show geographical relationship with the dredging in association with the Dover Western Docks Revival project.
- KWT: to provide a "wish list" for formal post-construction fish, shellfish, and benthic ecology monitoring, with examples of best practice.
- The Applicant: to clarify the link between geophysical monitoring and the biogenic reef plan within the draft Order.
- The Applicant/MMO: to confirm the position that there is a general power available to the MMO to control or cease piling where noise levels are exceeded.
- The Applicant/MMO: to continue documenting positions on long-term effects on the benthic environment and herring spawning in