

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 11 to Deadline 3 Submission: Written
Summary of Oral Case put at the Issue Specific
Hearing 5

Relevant Examination Deadline: 3

Submitted by Vattenfall Wind Power Ltd

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Revision A

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1 Introduction

- 1 This speaking notes summarises the Applicant's representations on Shipping and Navigation as presented on 20 February 2019 at Issue Specific Hearing 5.
- 2 The note follows the structure of the Agenda for the Issue Specific Hearings and also identifies items discussed at the IS Hearings that were not on the agenda.

1.1 Participants

- 3 Oral representations were made from the following interested parties:
 - Robbie Owen (RO) (Pinsent Masons, for Port of Tilbury and London Gateway Port)
 - Vincent Crocket (VC) (HR Wallingford on behalf of PoT)
 - Matthew Carpenter (Pinsent Masons, for Port of Tilbury and London Gateway Port);
 - Trevor Hutchinson (TRH) (Port of Tilbury and LGA);
 - Roger Barker (ROB) (Trinity House);
 - Trevor Harris (THA) (Trinity House);
 - Rakesh Bandet (RAB) (MCA);
 - Tony Evans (HM Coastguard and Sunk User Group);
 - Fena Boyle (HB) (UK Chamber of Shipping);
 - Tim Corthorn (TIC) (PLA);
 - Alix Dillistone (AD) (Winckworth Sherwood, for Port of London Authority and Estuary Services Ltd);
 - Richard Jackson (RJ) (Estuary Services Ltd); and
 - Andy Simon (AS) (London Pilots Council).
- 4 Shipping and Navigation oral representations from the Applicant were made from the following personnel in these Hearings:
 - Scott Lyness (Counsel for the Applicant) (ScL);
 - Daniel Bates (Consents Manager at Vattenfall) (DB);
 - Sean Leake (EIA Lead at GoBe Consultants) (SL)
 - Dr Ed Rogers (Project Director and Technical Lead at Marico Marine) (ER); and
 - Captain Simon Moore (Marine Lead, Independent) (SMO).

1.2 Agenda

- 5 Shipping and Navigation Issue Specific Hearing agenda items were structured as listed below. It is noted that there was considerable overlap between ISH Agenda Items and thus items in this agenda note are addressed in the order that discussion was held during the Issue Specific Hearing (with expansive points provided where appropriate).
- Issue Specific Hearing 5 – Agenda Item 2
 - Issue Specific Hearing 5 – Agenda Item 3
 - Issue Specific Hearing 5 – Agenda Item 4 – Technical Considerations – Navigation Risk Assessment
 - Issue Specific Hearing 5 – Agenda Item 5. Effects on Navigation in the approaches to the Thames and Medway Ports

2 Agenda Item 2 - Applicant's Position on ISH2 and Written Representations

- 6 The Panel's understanding has developed since the drafting of the Agenda as they have now reviewed the Deadline 2 submissions. RS said that the IPs are in broad agreement that around 50% of the array area needs to be removed from the Project for maritime safety reasons. The Applicant disputes this proposition and has made submissions that this reduction would render the Project unviable.
- 7 The Panel additionally noted that there are essentially two possible outcomes. The Applicant has requested a greater level of evidence and subject to that there may be scope for agreement on an agreeable reduction in the RLB; alternatively, no such agreement may be able to be reached. If the latter option emerges as most likely by the end of the hearing (ISH5), then the Panel will have to appraise evidence of each side in detail by the end of Examination to make an adjudicated recommendation to the Secretary of State (SoS).
- 8 ScL explained that the Applicant has considered the mitigation suggested by way of an extensive reduction in the RLB and does not believe it has been sufficiently substantiated by the interested parties (IPs) by way of detailed opposition to the evidence submitted in support of the application, including the NRA. This has been set out in the Applicant's Deadline 2 Submissions. The Applicant does not consider at this stage that the change suggested by the IPs is justified, but recognises that concerns have been raised. He added that as evidenced by meetings held last week, the Applicant is committed to seeking resolution of objections where possible and is prepared to hold further meetings to investigate whether any compromise can be reached, without prejudice to its view that the scheme as proposed is acceptable. However it was necessary for the Applicant to know that the IPs would come to this discussion with open minds and a genuine and constructive attempt to reach agreement.
- 9 ScL clarified that the Applicant does not view mitigation as necessarily limited to a change of the red line boundary (RLB). The Applicant is aware of the issue of timings and is conscious that the ExA will need to take a position on how procedurally to address outstanding objections. The Panel highlighted that the agenda for April's hearings will be shaped by material which emerges during ISH5.
- 10 ***The Panel raised the issue of the disparity between the maximum installed capacity of the Project as understood by the Crown Estate (300 MW) and that applied for (340 MW). If there is any flexibility here then it could be relevant for the purposes of the hearing.***

- 11 ScL explained that discussion is ongoing with regards the lease from the Crown Estate. The Applicant views this as a separate issue from the consent process.
- 12 RS said that there is an element of cross over as if the Project is only able to build out only to 300 MW, and this would be unviable, this is relevant for the purposes of Examination process.
- 13 ScL explained that the Applicant considered that the application for a DCO was a matter to be determined on its own merits, bearing in mind that the discussions with the Crown Estate on the terms of a lease were ongoing. The Applicant had been in discussions with the Crown Estate on this matter and could update the Panel at the CAH hearing, which the Crown Estate would be attending.

3 Agenda Item 3 – Policy Considerations

3.1 Agenda items 3a-d

- 14 The ExA asked each party to summarise the "policy landscape". After hearing submissions from the IPs, ScL explained that the Applicant did not regard the NPSP as applicable, as per the wording of agenda item a. ScL then considered section 104 of the PA2008.
- 15 Section 104(2) provides that in deciding the application the Secretary of State must have regard to (a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"). NPSP was not a policy statement which had effect in relation to the development proposed in this case, essentially an offshore windfarm. NPSP was directed at new port development (eg paragraphs 1.2, 3.5.1). NPS EN-3 was instead directed at the proposal.
- 16 In relation to section 104(2)(d)) ("any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision"), the only relevance that the NPSP could have would be by what the Port of Tilbury and London Gateway had described as "contextual and background" information. But there was nothing in the NPSP which gave any relevant policy guidance on how to determine applications for development such as the present project. The relevant policy vehicle was NPS EN-3 which gave guidance on how the effect of proposals on shipping routes should be assessed.
- 17 ScL clarified that there was no dispute in general terms that the potential effects of proposals on the operation of ports was capable of being important and relevant, but beyond contextual material there was nothing in NPSP which was important and relevant by way of actual policy guidance that advised how this application for this project should be determined. That guidance was contained in NPS EN-3 in particular.
- 18 ScL submitted, referring to the agenda item b which raised the issue of NPS EN-3 countering NPSP, that there was no hierarchy or countering effect between the NPSP and the NPS-EN documents as they are different policy documents; and in the case of Thanet Extension, NPS EN-1 and EN-3 both set out the need for energy development and contain the relevant policy tests which have to be applied in relation to navigational issues affecting offshore windfarm development.

3.2 agenda item 3e) NPS EN-1 section 5.13 addresses (inter alia) 'transport' but does not refer in specific terms to maritime navigation. Are any general principles arising from that policy applicable to this application?

19 ScL clarified that it is the Applicant's view is that NPS EN-1 section 5.13 relates only to land-based development, as is suggested by the references to transport assessments using methodology stipulated in Department for Transport guidance as well as consultation with the Highways Agency and Highways Authorities as appropriate on the assessment and mitigation.

3.3 Agenda item 3f) Are the provisions of NPS EN-1 paragraph 5.13.12 relevant?

20 This provision states that the where mitigation would lead to a Project being rendered "economically unviable", this should not alone persuade the Panel not to recommend the mitigation.

21 ScL confirmed the Applicant's view is that paragraph 5.13.12 of NPS EN-1 relates only to transport issues arising from onshore development, and is not intended to apply as a general principle. But the Applicant did not suggest that if mitigation was regarded as necessary to achieve what would otherwise be an unacceptable scheme, that need for mitigation should be negated by an argument that it would not be viable.

3.4 Agenda item 3g) In respect to NPS EN-3 paragraphs 2.6.147 to 2.6.175

i. Would the proposed development 'pose unacceptable risks to navigational safety after mitigation measures have been adopted'? (2.6.147) and if so, can additional design or mitigation measures be provided to address these?

22 SCL explained that the Project does not pose unacceptable risks, as evidenced by the material supporting the application. There had been no detailed substantive evidence presented by the IPs which explained why the judgments in the NRA were misplaced; and there had been effectively no attempt made to consider whether design or mitigation measures short of suggesting an unviable reduction in the RLB could be put in place. There had been no real technical engagement with the Applicant's case.

ii. Has there been sufficient and effective engagement between the Applicant and maritime navigation interests to 'allow [the Thanet OWFE] and navigation uses of the sea to successfully co-exist' (2.6.153) and if not, what additionally needs to be done?

23 SCL explained that the extent of consultation could be addressed later in the hearing but the Applicant's view is that such engagement had occurred. In addition, the Applicant does not view paragraph 2.6.153 as containing a freestanding policy test.

iii. Is the test in NPS EN-3 paragraph 2.6.161 met: is the proposed development likely to cause 'interference with the use of recognised sea lanes essential to international navigation' and if so, can the effect of this interference be removed by additional design or mitigation measures?

24 SCL said that the Applicant has not received any submissions from the IPS to suggest that paragraph 2.6.61 applies here or why. Paragraph 2.6.161 defines the use of recognised sea lanes as those essential to international navigation. Sub paragraph (a) refers to Article 60(7) of UNCLOS. This Article does not deal with sea lanes [although the Applicant does not consider that reference to this Article in EN-3 should be characterised as an error, as was suggested at the hearing. Article 60 deals with artificial islands, installations and structures and the safety zones around them, and Article 60(7) states that they not be established where interference may be caused to the use of recognized sea lanes essential to international navigation. Article 60(7) does not, however, contain any definition of recognised sea lanes essential to international navigation]. Other articles in UNCLOS refer further to sea lanes. Article 41 for example allows states to designate sea lanes in specified circumstances and these must be clearly indicated through due publicity on charts when designated. This suggested that recognised sea lanes essential to international navigation should also be designated in some way and charted. The routes shown within Appendix 28 to the Applicant's DL1 submission are not charted as international sea lanes.

25 RAB (MCA) explained that in addition to UNCLOS requiring sea lanes to be advertised and charted, issues on routing measures or sea lanes are required not only to be advertised and charted but consensually agreed by IMO member states.

iv. Have sufficient steps been taken to avoid or minimise 'disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade'? If not, what additional steps can be taken? (2.6.162) (The question of residual effect needs to be dealt with in the April hearings.

- 26 ScL identified that the NPS does not define "strategic routes essential regional, national and international"; and the Applicant has not received evidence suggesting that there were any such relevant routes in this case. Figure 11 of the NRA shows MMO-defined important routes and this does not include the inshore route. The Applicant was not conceding at this stage that this aspect of the policy applied to this case. He noted that section 2.6.163 referred, as part of a tiered approach to policy, other "less strategically important routes".
- 27 Reference was also made during the hearing to the Marine Policy Statement and the ExA recorded an action point which sought submissions on the approach to policy including the MPS, for Deadline 3.

4 Issue Specific Hearing 5 – Agenda Item 4 – Technical Considerations – Navigation Risk Assessment (NRA)

4.1 Agenda Item 4a) and 4b)

- 28 After hearing representations from other IPs and following an invitation from the ExA, ScL repeated the general position that the Applicant had consulted extensively as set out in the consultation section of the NRA. But in respect of the criticisms expressed by the PLA in particular, he observed that details of this consultation had been supplemented by Annex I - J to Appendix 25. The Applicant did not accept that there had been inadequate consultation. ScL gave examples of various meetings as listed in Annex J and argued that there was an extensive consultation carried out through meetings, as evidence by their minutes, and the various reports related to pilotage, simulation and navigation issues dealt with in the NRA. In particular, the PLA and ESL had been involved in the pilotage study, participated in, reviewed and agreed the inception report for the simulation study, provided their simulation facilities, and simulation pilots and coxswains of their choice and agreed the findings of the simulation wash up after study and have not provided any comments. The PLA and ESL had been given sufficient early opportunities to raise their concerns relating to method, and the Applicant was surprised at the late stage at which these concerns are now being raised, especially as it is as it was their own simulator that was being used and given their involvement in setting it up. If there were real concerns with the simulation the Applicant would have expected more detailed points to have been raised at an earlier stage.
- 29 ScL noted that points raised by HR Wallingford on behalf of PoTL had been heard for the first time at these hearings. As regards any criticisms of consultation, this had been covered by the Deadline 2 submissions, but the ports were in excess of 40nm away from the scheme and consultation was properly carried out in part with the Port of London who exercised wider responsibilities over a much larger area than the ports. Further, the relevant shipping routes (containing the embedded traffic to/from these ports) were taken into account in the NRA.
- 30 As regards criticism of the pilot simulation study and its coverage of the wind farm, ScL noted that the wind farm was indeed not initially in the simulator as set-up and had to be added manually using oil rigs as a proxy. There was no valid criticism of the study and the absence of the existing wind farm from the simulator perhaps told its own story about how the PLA viewed its significance as regards pilot simulation.

4.2 Agenda Item 4c

- 31 The ExA referred to the IMO FSA guidelines (Annex 1) and its recommendations on reporting the level of agreement between experts. The ExA queried the requirement and level of independent review required of the NRA prior to its finalisation.
- 32 ScL noted that the references to agreement between experts in the guidelines should be read in context, in particular their preparation to inform IMO rule-making where different countries would be involved. There was no specific guidance to suggest that some form of peer review was necessary when development proposals were being brought forward such as in this case. In any event there had not only been internal discussions between different experts which informed the preparation of the NRA; there had also been consultation as required by the legislation and guidance and the NRA specifically recorded in Section 4 how the results of consultation had been reflected in the assessment within the NRA itself.

4.3 Agenda Item 4d

- 33 ScL explained, with regards to issues raised on seasonality, that there were two periods of surveys including data from February 2017 and June 2017 which, together, provided 28 days of survey results. This complied with Annex 1 of MGN 543. There was an additional 3 months of AIS data during the winter months. Regarding recreational vessel activity, the RYA provided information on vessel density which was included in NRA; and has not sought to raise any objection to reliance on that data on the grounds of concerns over seasonality (in particular the use of June data). There were no issues with seasonality raised by MCA.
- 34 ScL also noted that the survey data had to be seen in its wider context: the NRA also took into account a dataset of incident data from 1997 to 2015 – representing a long term dataset. Furthermore, any risks associated with fishing and recreational vessels prioritised with the NRA hazard log assessment. ER added that the survey data was issued at PEIR and at that point were no concerns raised about timing of the vessel traffic survey.
- 35 ScL added that MGN543 Annex 1 guidance indicating when survey times may need to be extended relate to circumstances where the Environmental Statement was not submitted within 24 months. The 28 days of survey effort in this case has met the MGN543 requirement.

- 36 ScL gave an initial response to comments by POTLL and DPWLGL regarding demand and future traffic profiles. First, it was noted that the ExA requested this information of the IPs at Deadline 1 and this has not yet been provided for consideration. Nonetheless, the Applicant has considered future traffic trends (noting Section 6 of the NRA) allowing for a 10% increase, having regard to both national and local trends, in particular future increases in traffic identified by the Port of London through the Thames Vision project. The figures provided by POLL and DPWLGL did not allow for translation to vessels that will travel along the inshore route in particular.
- 37 ScL responded to THLS observations regarding fishing vessels, noting that data on fishing vessels was fed into the work and taken into account as part of wider NRA. At that point there has been no specific criticism on why the data, or the judgements made on this, might be wrong.

5 Specific Hearing 5 – Agenda Item 5 – Effects on Navigation in the approaches to Thames and Medway Ports

5.1 Agenda Item 5a)

- 38 ScL asked ER to speak this issue noting, that having looked at the D1 and D2 material had identified areas where there appeared to be scope for agreement:
- Minimum safe distance – suggestion by LPC at Deadline 1 of 0.5 nm was a figure to consider – albeit noting that PLA and ESL stated 1nm.
 - Sea room Inshore Route – regarding vessel size, there appeared to be a measure of agreement that 299m vessel should be regarded as the largest representative vessel length (and 48m beam) to transit inshore route under normal circumstances. The Port of London had appeared to accept this at D1.
 - Wider sea room calculations – LPC's material sets out a methodology taken from MGN 543 where vessels of varying size were taken into account to give an estimate of appropriate sea room. The Applicant has taken into account this methodology and sees some merit in using it as a basis for further discussions with IPs without prejudice to its position that its existing evidence is sufficient to show that any reduction in sea room would be acceptable.
 - Dipping traffic – from the material at Deadline 1, the largest vessels length determined was 299m and, based on that calculation and again the separate related calculation of sea room provided by LPC, there was merit in considering this as a starting point for further discussions with IPs.
- 39 The ExA asked the Applicant about progress on discussions with IP's on these points and ScL said this approach was set out in D2 responses, and raised at meetings last week with IPs, without any specific feedback.
- 40 The ExA asked if the Applicant needs to engage not just with maximum vessels in draught but also consider sea room requirements for a particular class of vessel in the context of the issue of LNG vessel trade using the Inshore Route.
- 41 ScL confirmed the Applicant is available to review and consider evidence that is raised by IPs but has provided survey evidence of traffic using the inshore route which has not yet been the subject of detailed dispute.
- 42 **Action: the Applicant and the IPS would seek to provide statements of common/uncommon grounds.**
- 43 ER went on to explain that the Applicant divided issues, in line with issues raised in Deadline 1 responses as following:

- Inshore Route
 - Pilot Boarding
 - Vessel Dipping from North to take a pilot
- 44 Calculations have been undertaken, and provided at Deadline 2, to reflect these specific activities.
- 45 The calculations show to the south west the sea room is sufficient based on calculations. ER advised that it was not clear if the calculations put forward were agreed upon but the Applicant are open to further discussions.
- 46 ExA asked if there is ability to re run some of the bridge simulation or other aspects of the NRA in mind of providing confidence in any change.
- 47 ScL agreed the Applicant would take that issue away for consideration but anticipated that there if were to be any change in the proposals resulting from further discussions there would need to be at least some qualitative review of the NRA.

5.2 Agenda Item 5b:

- 48 ScL asked ER to first deal with sea room for pilotage operation and then the inshore route.
- 49 ER explained that ESL and PLA'S sea room requirement for pilot boarding is 2nm plus 1 nm buffer. The Applicant considered the collected data collected and identified the largest individual vessels, being 299 m long, that dip down to take pilot. The approach to assessing sea room adopted by LPC was examined having regard to this data. ER referred to paragraph 22 of Appendix 2 to D2 submissions which showed how this was carried out.
- 50 For a 400m LOA vessel – the calculation for required sea room of 1.83nm is determined and a 0.5nm buffer should be applied (2.3nm total width). For a 299m vessel length the total dimension was 1.88nm (which equates to the distance between NE Spit Buoy and the RLB).
- 51 ER suggested looking at operations of vessels that dip down (turn around circa 180 degrees and then return) and the analysis as presented at Appendix 25 Annex G to the D1 submission, with particular reference to the vessel length plot (page 6). This plot shows the current transit of pilots by vessel length (various lengths) and the largest category is >240 meters LOA. This occurred on 4 occasions within 31 days period. ER explained that we have a starting point to agree on the width of the vessels, this can be looked at further during workshops.

- 52 ER also presented figures from the pilotage study and also drew attention to the Applicant's submission for D2 (Appendix 4 Submission on pilotage, Figure 5 on page 14). ER explained that this, and the evidence within this submission, provided an indication of the locations where pilot transfers takes place and the sea room required to do so. ER presented measurements for two vessels (206m and 299m LOA) that came out of this. The largest observed vessel dipping down from the north was 299m. ER explained there is a basis within these tracks and the sea room calculations carried out using the LPC methodology to identify the sea room necessary for all pilot transfers in that particular location.
- 53 ***ExA suggested that a workshop format needs to take place in order to explore the parameters to be used to assess sea room.***
- 54 **Action: Workshop with the Applicant and the IPs.**
- 55 With regard to the inshore route, ER explained the narrowest point on this route , of 2.0nm, occurs between Elbow Buoy and the RLB. The Applicant had considered sea room adopting the same methodology as per the LPC submission. On this approach the necessary sea room calculation would be 1.9nm and similar to that at the NE Spit Buoy. ER noted that this was based on 4 concurrent vessel transits which is not a usual occurrence; but nevertheless a basis for discussion exists on the inshore route.
- 56 ScL noted that at D2 data had been provided by PLA and ESL regarding the "off" and "restricted" parameters for the usage of SUNK and NE Spit (showing the NE Spit remains on station more time). The Applicant does not understand how these figures and methodology relate to the on/off/restricted status of the Tongue and NE Spit and this can be addressed further in later submissions.
- 57 ScL recapped, with regards to agenda item 5a, stating that there is evidence that there is sufficient sea room within the inshore route for the largest vessels using that route under normal circumstances and therefore there will not be a material change in the vessels electing to avoid navigating the inshore route or not. This is relevant to agenda item 5f and the Applicant therefore does not accept the additional route distance/steaming time 14.4nm stated by IPs. Notwithstanding this, the Applicant undertook re-routing calculations within the NRA which assessed the re-routing distances as 11nm (not 14nm). The main reason for this difference is related to dipping vessels – noting that if a vessel elected not to transit the inshore route it would then be unlikely to dip back into the NE Spit area to transfer a pilot. Following questions about this assumption by the ExA, ScL noted the dispute on this and stated that the Applicant would interrogate the evidence of ESL and LPC further.

6 Agenda Item 6 - Mitigation of Effects on Navigation and Commerce

- 58 ExA explained that attempting to summarise the points raised under this Agenda item at this stage ahead of the arranged technical workshop would not be a useful exercise given that detailed discussions could take place in a workshop between the parties.

7 Agenda Item 7 - Any Other Marine and Related Considerations

- 59 The ExA explained that these matters have been covered over the course of the workshop.

8 Agenda Item 8 - Any Aviation Considerations

- 60 Th ExA explained that this agenda item was included on the expectation that Manston Airport would be in attendance. In their absence this item will be dealt with through written submissions.

9 Agenda Item 9 - Procedural Decisions (If Required)

- No procedural decisions were made in the hearing.

10 Agenda Item 10 - Review of issues and actions arising

61 The following actions were assigned during the hearing:

- The parties are to prepare submissions clarifying who determines what a sea lane is for purposes of UNCLOS, in the context of paragraph 2.6.161 of EN3.
- Any further submissions on references to the Marine Policy Statement and associated marine plans should be included in Deadline 3 submissions dealing with important and relevant policy considerations.
- The Panel seeks guidance on the extent to which IMO guidelines amount to international obligations for the purposes of section 104 PA2008
- The Applicant to formally submit to the examination the IMO guidance.
- The MCA to seek formal internal guidance and put position to the ExA in writing and as part of that give clear view on whether external expert review would normally be expected in this type of project.
- For the IPs (PoTL etc., MCA, PLA, ESL) to address in writing the rest of the items under agenda item 4 by Deadline 3; and to provide the latest position on deviation distances should use of the inshore route not be prudent.
- All parties to explore potential for SoCGs and to ensure that areas of uncommon ground are captured in SoCGs.
- A workshop should be held between the Applicant and the IPs to explore the potential for agreement on potential mitigation measures.

11 Agenda Item 11 - Next steps

- 62 ScL confirmed that the Applicant has discussed bilateral expert meetings as soon as possible and a multiparty workshop will be arranged as requested by the ExA. By Deadline 3 an update as to where discussions are leading will be possible; if any movement was to be made in light of these discussions this would need to be approved internally at Vattenfall and as such may not be ready until Deadline 4. In this scenario there ought to be sufficient room in the Examination timetable for parties to comment. The Applicant could set out how it envisaged the timetable operating in response to any proposed changes by Deadline 4, including a potential Deadline 4A to allow for evidence to be provided on the implications of any proposed changes and outstanding issues between the parties.