

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 5 to the Deadline 4 Submission -
Responses to comments on Shipping Policy
Considerations

Relevant Examination Deadline: 4

Submitted by Vattenfall Wind Power Ltd

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1 Introduction

- 1 This document provides the Applicant's response to Interested Parties comments in relation to action point 1 from ISH5 which requested '*All IPs to provide full and specific details of what they consider to be the important and relevant policy considerations to this case.*'. This action point followed on from ISH5 agenda item 3 and this document follows the format set out in the agenda.
- 2 The document also provides further thoughts on policy considerations relating to NPS EN-3, expanding upon points made at Deadline 3 and comments in response to ISH5 action point 2.

2 Responses on ISH5 Action 1 – Policy considerations

2.1 Agenda item 3a

- 3 Agenda item 3a asked *'To what extent is NPS Ports applicable to the proposed development?'*.
- 4 The Applicant agrees with the responses of all Interested Parties (IPs) on the matter of the relevant National Policy Statements being EN-1 and specifically EN-3.
- 5 PoTLL and DWPLG submit that other marine policy documents should be taken into account in deciding the Application.
- 6 The Applicant accepts that under section 104(2)(aa) of the Planning Act 2008, the UK Marine Policy Statement 2011 (MPS) is an appropriate marine document and is to be taken into account. It notes that the MPS recognises (see paragraphs 3.3.3, 3.3.19 and 3.3.23) offshore wind is expected to provide the largest renewable electricity contribution to national and international targets for the use of renewables and reductions in greenhouse gases; and to offer potentially significant socio-economic benefits from the sector including employment opportunities, export business and energy security. The national level of need for energy infrastructure, as set out in EN-1. The MPS also recognises (paragraph 3.4.5) that shipping is an essential and valuable economic activity for the UK. Paragraph 3.4.7 advises that "Increased competition for marine resources may affect the sea space available for the safe navigation of ships. Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety and ensure that their decisions are in compliance with international maritime law. Marine Plan development and individual decisions should also take account of environmental, social and economic effects and be in compliance with international maritime law". This guidance is to be read with policy in EN-3 which also deals in greater detail with shipping activity.

- 7 The South East Marine Plan that would cover the area of the application site and study area has not, as yet, been adopted and is therefore not an 'appropriate marine policy document' as required by Section 104(2)(aa) of the Planning Act 2008. It contains draft policies which may otherwise be regarded as relevant, to the extent that they are intended to complement general policies in the MPS, but they are in draft form only at this stage. Policy SE-PS-1 requires proposals to demonstrate that impacts on port operations have been avoided, minimised or mitigated or, if mitigation is not possible, require that a case is made for the proposals. Impacts on ports are not therefore prohibited by the draft policy, however as the Applicant has explained it considers that the proposals would not cause any effects on port activity. Policies SE-PS-2 and 3 protect against proposals which require static sea infrastructure that encroaches upon IMO routing systems or (undefined) high density traffic routes. The infrastructure in the proposals would not encroach on any such routes.
- 8 The East Marine Plan (EMP) covers large area of the southern north sea including approaches to the outer Thames Estuary from the north and is therefore outwith the application site and the 5nm study area for shipping and navigation. It is not therefore considered to be an appropriate marine policy document. Its policies are of doubtful relevance for the same reason, but as with the draft South East Marine Plan its broad objectives are intended to be consistent with the MPS and the proposals would comply with them in any event. Policies PS1 and PS2 protect against infrastructure that encroaches into IMO Shipping Routes or identified important navigation routes in the plan area. The EMP contains some relevant contextual information on shipping routes which inform these policies. IMO Designated Routes are shown in Figure 18 (of the EMP), which clearly identifies the Sunk and Dover Straights Traffic Separation Schemes that are not physically affected by the project. Important shipping routes within the plan area are also defined on Figure 18. These routes are presented in Figure 11 of the NRA (PINS ref: APP-089), which demonstrates that the project sits outside of these routes. The proposals would not therefore conflict with these policies. Policy PS3 relating to port activity is drafted in similar terms to policy SE-PS-2 of the draft South East Marine Plan. It does not relate to proposals outside the plan area, but reflects the MPS in so far as it does not prohibit impacts on port operations and allows a case to be made where impacts would arise. As mentioned above, the Applicant does not consider that any such impacts would arise.
- 9 Further submissions are made in respect of EN-3 below.

2.2 Agenda items 3b - d

- 10 Agenda items 3b, c and d relate to the need case for ports:

b) Does the policy justification for the proposed TEOW development have the effect of exerting a counter-force against the 'compelling need for additional port capacity'? If so, what weight should be accorded to that effect?

c) Which particular provisions of NPSP might be relevant?

d) What weight might be accorded to them?

- 11 The Applicant agrees with the position set out in response to b, c, d that there is no 'counter-force' exerted by any need case for ports (under the Ports NPS or otherwise) to the need for the project defined by NPS EN-1 and EN-3.

2.3 Agenda item 3e

- 12 *'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?'*

- 13 In response to item 3e, the relevance of NPS EN-1 5.13, as set out in its response to Deadline 3 the Applicant considers that this relates to land-based transport.

2.4 Agenda item 3f

- 14 *Are the provisions of NPS EN-1 paragraph 5.13.12 relevant?*

- 15 The Applicant agrees that EN-1 paragraph 5.13.12 is broadly relevant insofar as commercial viability of a project should not in itself justify relaxation of the need to secure mitigation where this is considered necessary to achieve an acceptable scheme.

2.5 Agenda item 3g(i)

- 16 *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?*

- 17 The Applicant notes the position of PoTLL and LGPL that the project would pose unacceptable risks to navigation safety. Whilst on the basis of the NRA the Applicant does not agree with this position, the SEZ has been introduced to provide for greater sea room and further work is being undertaken to demonstrate the robustness of the NRA, including a HAZID workshop with IPs on 2nd April. The Applicant will provide an addendum to the NRA at Deadline 4a.

2.6 Agenda item 3g(ii)

- 18 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?
- 19 The Applicant did not consult with PoTLL and LGPL prior to the Application as consultation with respect to the Thames Estuary was undertaken with the PLA as Statutory Harbour Authority for the waters up to the PoTLLs harbour limits. PoTLL and LGPL are a considerable distance from the project (circa 40nm) and in terms of vessels entering the Thames Estuary (which is still a significant distance from these ports) the PLA are the appropriate organisation.
- 20 It is also noted the PoTLL did not consult with Thanet Extension during its DCO application, presumably on the basis that there was not sufficient interaction between the two developments to warrant consultation. Had the additional vessel movements associated with Tilbury2 been thought to lead to potential effects on developments as far out as Thanet Extension, it would be expected that consultation would have been undertaken. Related to this, the NRA for PoTLL states that beyond its own harbour limits it relied upon the PLAs risk assessment which suggests that for its own development, PoTLL was satisfied to rely upon the PLA as the Statutory Harbour Authority from their own limits to the outer Thames Estuary.
- 21 Nonetheless, the Applicant is now actively engaging with both PoTLL and LGPL and continues to progress discussions with both interested parties.

2.7 Agenda items 3g(iii) and (iv)

- 22 These agenda items relate to the policy tests in NPS EN-3 and have been combined with consideration of responses on ISH Action Point 2 in Section 3, below.

3 Consideration of NPS EN-3

- 23 Consideration of the relevant paragraphs of NPS EN-3 are set out below and respond to agenda items 3(g)(iii) and 3(g)(iv). These responses also overlap with comments on responses to ISH action point 2 relating to legal submissions on the definition of a sea lane for the purposes of paragraph 2.6.131 of NPS EN-3.
- 24 Agenda items 3(g)(iii) and (iv) are as follows:
- 25 *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?*
- 26 *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.*

EN-3 Paragraph 2.6.161

- 27 The Applicant notes the conclusion of the MCA that 'we are not aware that this 'channel' is recognised as an International Sea Lane' and that this is on the basis of it not being marked on a nautical chart or elsewhere defined. The Applicant agrees with this position (as set out in the Deadline 3 submission) and similarly notes that PLA/ESL also agree that the inshore route is not an international sea lane. As such, it is clear that the Secretary of State should not be referring to EN-3 paragraph 2.6.161 when determining the Application.

EN-3 Paragraph 2.6.162

- 28 The paragraph states '*The IPC should be satisfied that the site selection has been made with a view to avoiding or minimising disruption or economic loss to the shipping and navigation industries*'. The Applicant's approach to site selection is set out in the relevant ES chapter (PINS ref: APP-040) and clearly sets out how regard has been given to minimise the effect on these industries (paragraph 4.6.7), particularly through the pre-application boundary change, following consultation responses at Section 42. Furthermore, the Applicant has introduced a Structures Exclusion Zone (SEZ) which further minimises effects, reflecting the ongoing consideration of the effects on these industries. It is therefore clear that the Applicant has complied with this test.

- 29 The paragraph goes on to state that the site selection should be made *‘with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, lifeline ferries and recreational users of the sea.’*
- 30 The NPS does not define what approaches to ports, or such routes are, by reference to independent regulatory definition or otherwise.
- 31 The area of the inshore route and routes surrounding the project has been described as an area of open sea and there is no demarcation of these areas as a recognised sea lane, nor is there buoyage, VTS or other controls which you would expect to find in the approaches to port further into the Thames Estuary. The PLA has made it clear in their deadline submissions that this area cannot be equated to marked channels such as Fisherman’s Gat or the Princes Channel because of the additional control measures in place within their statutory harbour limits. It is areas such as these that should be considered approaches to ports (in this case the Port of London and ports further along the river) and not wider areas of open sea, as with the route around the project. If areas such as those surrounding Thanet Extension were considered ‘approaches to ports’, particularly in relation to Port of Tilbury and London Gateway, some 40nm distant, then huge swathes of the sea would be considered approaches to ports and this is not considered to be the intention of the policy. Referring to the EMP, whilst Figure 19 referring to ‘approaches to ports’ does not cover this area, paragraph 369 provides context for considering where these approaches may be stating *‘Where a specific port or harbour is not included in figure 19, Figure 20 shows existing licensed dredging and disposal areas, which may be used to indicate where future capital dredging may occur. This approach provides a good starting point for assessment...’*. The Applicant notes that no capital dredging is carried out or proposed within the study area, other than the approach to Ramsgate Harbour on the south western periphery. It is not being suggested that the project would affect the approach to Ramsgate Harbour and a cable exclusion zone has been defined over the dredged channel specifically to avoid affecting the approach.
- 32 As for site selection relating to *‘strategic routes essential to regional, national and international trade’*, again there is no clear definition of what these routes are. The Applicant notes however that vessels have multiple routes into the Thames Estuary. But the project has sought through site selection and the introduction of the SEZ to avoid effects on these routes in any event. The project does not affect lifeline ferries and will not have significant effects on recreational users of the sea, as confirmed in the Statement of Common Ground with the Royal Yachting Association (PINS ref: REP3-044).

- 33 Paragraph 2.6.162 further states ‘Where a proposed development is likely to affect major commercial navigation routes, for instance by causing appreciably longer transit times, the IPC should give these adverse effects substantial weight in its decision making.’.
- 34 There is no definition of ‘major commercial navigation routes’ and the Applicant has seen no substantiated case, by reference to regulatory definitions or otherwise, to confirm that the inshore or northern routes fall within this definition. But there is no evidence that the proposals would cause any change to routing to the north of the site. As for the inshore route, this would remain open for vessel transits and, even to the degree that some of the largest vessels chose to avoid this area (which the Applicant does not accept), this would be a very small fraction of the total traffic. For example vessels over 240m represent just 1% of traffic using the inshore route. The additional transit distance between the inshore route and the most likely alternative has been estimated as 11nm by the Applicant and 14nm by other Interested Parties. This would equate to approximately an additional 20-40 minutes of steaming. Vessels coming up from the south through this route as likely to be coming from container ports in southern Europe or beyond and in terms of these journeys (e.g. Bilbao to Port of Tilbury approximately 1300nm, a 14nm deviation would equate to approximately 1%), this additional distance would not lead to appreciably longer transit times. Further, the paragraph acknowledges that ‘*There may, however, be some situations where reorganisation of traffic activity might be both possible and desirable when considered against the benefits of the wind farm proposal*’. This confirms that some effects on shipping routes covered by this policy are acceptable when balanced against the benefits of the wind farm. Even to the extent that a few vessels diverted from the inshore route (which is not accepted), the proposals would not therefore conflict with this aspect of policy (if it were considered to apply).

EN-3 Paragraph 2.6.163

- 35 This paragraph provides that “Where a proposed offshore wind farm is likely to affect less strategically important shipping routes, a pragmatic approach should be employed by the IPC. For example, vessels usually tend to transit point to point routes between ports (regional, national and international). Many of these routes are important to the shipping and ports industry as is their contribution to the UK economy”. This policy therefore applies even where international routes are affected. The Applicant considers that when applied in this case, the Applicant has demonstrated through the NRA (ref) and the introduction of the SEZ that it has sought to ‘*minimise negative impacts to as low as reasonably practicable (ALARP)*’.