

# **Vattenfall Wind Power Ltd**

## **Thanet Extension Offshore Wind Farm**

Appendix 15 to Deadline 5 Submission: Written  
Summary of Vattenfall's Oral Case put at the Issue  
Specific Hearing 9

Relevant Examination Deadline: 5

Submitted by Vattenfall Wind Power Ltd

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Drafted By:	Womble Bond Dickinson (UK) LLP
Approved By:	Daniel Bates
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## 1 Introductory Remarks

- 1 This note summarises the Applicant's case as presented at the Issue Specific Hearing 9 held on 17 April 2019 at the Discovery Park, Ramsgate Road, Sandwich (the "ISH9").
- 2 The note summarises the key submissions made in relation to each section of the draft Development Consent Order (dDCO). The Panel made the decision to take the interested parties and the Applicant through the dDCO page by page rather than adhering strictly to the Agenda as published on the Planning Inspectorate's website on 9 April 2019. As such, this written summary mimics that approach and considers the dDCO sequentially.
- 3 Where there is no reference to a section of the DCO within this note, this indicates that no issues were raised in relation to that section.

### 1.2 Introduction of the Participating Parties

- 4 Jennifer Holgate, Managing Associate at Womble Bond Dickson (UK LLP), spoke on behalf of the Applicant.
- 5 Oral representations were made on behalf of the Applicant by Sean Leake, Principal Consultant at GoBe.

## 2 Agenda Item 2 - Introduction by the Applicant: The Approach to dDCO Drafting and Changes to the Draft in Progress

- 6 The Panel asked the Applicant to present and justify the latest changes made to the dDCO
- 7 Ms Holgate took the Examining Authority through the latest changes, as described in the changes log submitted at Deadline 4 (REP4-011).

### 2.2 Part 4 – Supplemental powers

#### Article 16 – Public rights of navigation

- 8 The Panel noted previously expressed concerns by Trinity House (**TH**). The Panel added that the activity level in the waters for this development is similar to those on other Projects such as Walney Extension, and therefore recommended reviewing the equivalent provisions within that made Order. Ms Holgate and TH agreed to review and to develop an appropriate approach by Deadline 5 (**DL5**).
- 9 Ms Holgate further agreed to include drafting for to clarify the approval mechanism for the plan created under 16(2).
- 10 In response to a representation from the Port of London Authority (PLA) asking to be notified under article 16, Ms Holgate explained that other mechanisms exist within the remit of the order, to ensure that the PLA would be properly notified, such as the Notification and Inspections condition 5 and 6 in Schedules 11 and 12. Ms Holgate explained that article 16 is a provision specific to TH whereby TH will approve final demarcation of the WTGs location. The Applicant agreed to engage with PLA further on this specific point.

## 2.3 Part 7 – Miscellaneous and General

### Article 33 – Felling or lopping of trees and removal of hedgerows

- 11 Ms Holgate explained that article 33 has been amended to include words “*Subject to the consent of the relevant local authority*”, thereby ensuring compliance with Advice Notes 13 and 15. This is particularly because at present no hedgerows have been identified that require removal. As such, the approach is more robust and will ensure that if a hedgerow does require removal in the future there is a mechanism to allow for this. Ms Holgate agreed to confirm by DL5 that such consent is qualified and carries with it a procedure for any such approval.

### Article 36 – Arbitration

- 12 Ms Holgate explained that in article 36, additional wording regarding saving provisions for TH have been included. TH noted and welcomed this inclusion.
- 13 The Panel noted that statutory bodies are not yet aligned with the Applicant in their views on the arbitration provision as drafted. TH stated that the MMO's concerns about the arbitration provision stems primarily from concerns about how it may compromise the navigation of safety at sea. They indicated that this must take priority over any arbitration proceedings and as consulting party to the MMO, they expressed concern that they would become involved in arbitration despite their saving provision. Ms Holgate explained that the Applicant had instructed counsel to provide further detailed submissions on the suitability of the arbitration provision and why it is fit for purpose. Such submissions would allay concerns of the Examining Authority and that this would be submitted for Deadline 5.
- 14 The Panel asked for interested parties and the Applicant to both set out their respective positions for DL5. Ms Holgate agreed and committed to enter into examination the relevant submissions relating to arbitration from the Hornsea Project THREE and Norfolk Vanguard Examinations.

## 2.4 Schedule 1, Part 1 – Authorised Development

- 15 Ms Holgate explained that further to the Structure Exclusion Zone (SEZ) there were number of changes made in the draft DCO to make it clear what can and cannot be placed. Such changes reflect the material change proposed and are mainly in *Work No. 1 and No. 2*. Ms Holgate confirmed that on reflection, further changes could be made to the dDCO, in order to clarify further exactly what can and cannot be placed within the SEZ.

- 16 Ms Holgate informed the Panel that in relation to site disposal with the MMO, discussions are ongoing with the MMO and revised dDCO at D5 will be updated to reflect this.
- 17 The PLA requested clarification on what structures are excluded on SEZ areas and what use of SEZ area is made during construction and post operation of the scheme. The Panel explained the need for clear drafting in defining the SEZ and articulating the construction process and substantial maintenance activities in relation to SEZ to ensure that SEZ does the job it is commissioned for.
- 18 Mr Leake agreed to provide an explanation for SEZ for DL5 and Ms Holgate AGREED to make changes to the drafting to address these concerns in the revised dDCO.
- 19 Mr Leake explained that during the construction phase proposed in SEZ construction vessels could navigate within the SEZ and around specific turbine foundations. During the construction inter array and export cables will be installed within the SEZ, the latter being required due to the bisection of the offshore export cable corridor by the SEZ. Jack-up barges may also need to utilise part of the SEZ. This was clearly assessed within the Environmental Statement. There will be a safety zone of 500m during construction and during operation period no further structures will be in the SEZ. Ms Holgate explained that as with other DCOs, inter array cables may require micro-siting and the Applicant requires flexibility as to the number and location of cables. The Applicant agreed to provide more detail of what would be capable of construction within the SEZ by D5.
- 20 Mr Leake clarified that there will be a cable crossing towards the NE Spit.
- 21 In response to the PLA's concern, Ms Holgate agreed to review the drafting of the SEZ in Works No. 1 and No. 2.
- 22 Ms Holgate confirmed that the Applicant plans to undertake a second audit of the grid coordinates provided throughout the DCO and DMLs prior to Deadline 8.

## 2.5 Schedule 1, Part 3 – Requirements

- 23 The Panel noted where mitigation is proposed within the intertidal area, there is a need to ensure this is secured within the DML conditions as well within the DCO to ensure relevant consultation takes place between the MMO and relevant planning authorities.

- 24 Ms Holgate explained that Works 3A and 3B clearly demarcate the existence of the intertidal area and the drafting will either include a mechanism to account for this. Ms Holgate agreed to add a mechanism for offshore and onshore approvals.

## **2.6 Schedule 8 – Protective Provisions**

- 25 Ms Holgate explained that there will be modified protective provisions for National Grid, which will be submitted as soon as possible.

## **2.7 Schedule 9 – Arbitration**

- 26 As suggested by the Panel, Ms Holgate agreed to submit full legal representations in relation to arbitration for DL5.

## **2.8 Schedule 10 – Procedure for discharge of requirements**

- 27 The Panel suggested that this Schedule could be expanded to account for the issues raised in relation to Article 16. The Applicant and TH agreed to discuss this matter and consider this option.

## **2.9 Schedule 11 – Deemed Licence under the 2009 Act – Generation Assets**

### **Part 3 – Details of Licensed Marine Activities**

- 28 Ms Holgate agreed that a definition of the SEZ will be added to the interpretation section of both DMLs.

### **Part 4 – Conditions**

- 29 In response to a comment from TH regarding condition 6, Ms Holgate agreed to change the time period to 14 days.
- 30 Ms Holgate agreed with the Panel to remove live e-mail address in condition 7, which could be subject to change.

The Panel noted that at Issue Specific Hearing 8, wording was discussed in relation safety lighting on platform levels. Ms Holgate explained that this will be updated within the DMLs and within the Fishing Coexistence and Liaison Plan.

- 31 Mr Leake explained that at Deadline 3, Natural England (NE) requested additional wording to clarify pre-construction monitoring and surveys in relation to Goodwin Sands pMCZ and this has been reflected in Part 4, Condition 13 of Schedule 12.



- 32 The Panel asked whether there was a specific reason for the use of "as provided for" in place of "in accordance with" within Schedule 11, Condition 15 and Schedule 12, Condition 13. The Applicant has reviewed this and can now confirm that this is because those conditions refer to surveys which need to be undertaken in as provided for within the biogenic reef plan and the saltmarsh mitigation plan. These plans therefore contain principles and commitments to undertake certain future tasks but cannot contain precise details until the Project design is finalised post consent. Therefore, "as provided for" is more accurate and the Applicant will retain this wording.
- 33 In response to TH's request for additional wording regarding traffic monitoring and reporting to the MMO about the amount and direction of traffic during those activities in condition 14 (*Construction monitoring*), Ms Holgate explained that the Applicant is aware of this and will discuss with TH.
- 34 On advice of the Panel, Ms Holgate agreed to add a commitment to notify the MCA regarding known cable exposure for safety of their boats.
- 35 In response to the Panel's query on definition of the statutory nature consultation bodies in DML, Ms Holgate explained that the Applicant anticipate having a singular statutory body, which would be Natural England. This will be updated within the DMLs for DL5.

### **Schedule 13 – Documents to be Certified**

- 36 Ms Holgate explained to the Panel that the Applicant intends to update this Schedule to include a version reference, document number and date of publication for each document. The Schedule will also be updated to include the in principle offshore ornithology monitoring plan, the schedule of mitigation and any supplementary documents produced since the submission of the Application which now form part of the environmental statement.
- 37 In relation to the explanatory note, the Applicant agreed to make it more precise to ensure that the public body (i.e. Kent County Council or Thanet District Council) holding a hard copy document for inspection is consulted and aware of its obligations.

### Hearing Action Points 1

Action	Applicant's Response
<p><b>Article 33 Hedgerows</b></p> <p>Applicant to check the need for a formal discharge procedure for Art 33.</p>	<p>The Applicant refers to Article 37: Procedure in relation to certain approval, which provides for an approval mechanism, where such a request is made of a relevant planning authority for any agreement or approval required by any provision of the Order. This applies to article 33. Therefore there is no reason to include an additional discharge procedure for article 33.</p>
<p><b>Article 36 Trinity House</b></p> <p>Applicant to insert drafting to deal with notice for demarcation buoyage.</p>	<p>The Applicant believes this action is intended to refer to Article 16 – Public Rights of Navigation. The Applicant has welcomed ongoing dialogue in relation to Article 16 with Trinity House and has inserted their suggested preferred wording into the draft DCO submitted at Deadline 5.</p>
<p><b>Article 16 Public Rights of Navigation: approvals</b></p> <p>Subsections 2, 3 &amp; 4 sequence and content. Precedent to be researched and reconsidered and alternative wording to be proposed by THLS at D5 to the effect that the provisions shall not take effect until express approval to submitted plans has been received from THLS.</p> <p>The Applicant to respond at D6.</p>	<p>The Applicant has welcomed ongoing dialogue in relation to Article 16 with Trinity House and has inserted their suggested preferred wording into the draft DCO submitted at Deadline 5.</p>
<p><b>Article 16 Public Rights of Navigation: notification</b></p> <p>Reconsideration to be undertaken by both parties regarding whether PLA should be a named notifiable party under Article 16 (in regard to its VTS operations and issue of notices to mariners).</p>	<p>The Applicant has reviewed the drafting of this Article within other made Orders and has noted that the PLA has not previously been named as a notifiable party. The Applicant considers that the notification of the PLA would be addressed through the Shipping Liaison Plan and through the existing notification of mariners procedure as detailed within Schedule 11,</p>

<p>The Applicant to engage directly with PLA with a view to submitting agreed (or consulted) drafting at D5</p>	<p>Part 4 (7)(8) and Schedule 12, Part 4 (6)(8).</p>
<p><b>Article 36 and Article 41 Arbitration</b></p> <p>THLS believe that this article needs to go further to exclude public bodies exercising statutory duties or obligations from arbitration procedures. (Similar representations were also received from other statutory bodies at CAH1.) THLS has submitted draft wording but the Applicant does not at this time agree this</p> <p>Applicant to research precedent and for the consideration of TH and the ExA by D5 to draw attention to any public domain information and present structured argument. This review is to include consideration of and submission in of relevant documents arising from the Norfolk Vanguard and Hornsea 3 examinations.</p> <p>TH to review and submit further representations at D5.</p>	<p>The Applicant has included the relevant submissions from the Norfolk Vanguard and Hornsea 3 Examinations at [Annex A to this document].</p>
<p><b>Structures Exclusion Zone (SEZ) activities</b></p> <p>Activities allowable within the SEZ to be defined more clearly:</p> <ul style="list-style-type: none"> <li>• The Applicant to produce a further note to clarify the intended purpose of the SEZ, included activities, safety zones and subsea installations.</li> <li>• The Applicant to review the balance of provisions in the DCO and DMLs.</li> </ul>	<p>The Applicant has submitted a note titled "Extension Structures Exclusion Zone Consented Works Clarification Note", which explains the purpose of the SEZ and its intended activities.</p> <p>The Applicant has also revised the dDCO in order to clearly explain what is, and is not, permissible within the SEZ. A definition of the SEZ has been provided throughout.</p>

<ul style="list-style-type: none"> <li>• The Applicant to consider a schedule as a means to singly define what is permissible in the SEZ rather than what is excluded and as a single means of reference for both the DCO and DMLs.</li> <li>• THLS to consider the provisions in the light of safe navigation concerns at D6.</li> </ul>	
<p><b>SEZ definition and grid coordinates</b></p> <p>Applicant to:</p> <ul style="list-style-type: none"> <li>• amend the DCO and DMLs to include a definition of 'Structures Exclusion Zone' within Article 2 ('Interpretation') of the DCO and equivalent sections of the DMLs.</li> <li>• review and revise grid coordinate consistency between DML and DCO documents as appropriate (further to action 6 this may involve the development of a schedule).</li> </ul>	<p>The Applicant has included a definition of 'structures exclusion zone' within the dDCO and DMLs.</p> <p>The Applicant has updated the grid coordinates for the SEZ and has included these coordinates Requirement 6 within the dDCO in addition to the DMLs.</p>
<p><b>Audit of grid coordinates</b></p> <p>Revision needed of header row of latitude and longitude columns; audit of all coordinates to be redone after review and insertion of SEZ coordinates.</p>	<p>The Applicant has amended the header rows where needed and has reviewed and amended the coordinates for the SEZ.</p>
<p><b>Intertidal zone matters</b></p> <p>Insert wording (where needed) in DCO and DMLs in order to clarify cross-boundary 'handshake': consultation and approval procedures in the intertidal zone. [Ref. Action Point 13 from the ISH8 Natural environment Action Points.]</p>	<p>The Applicant has included wording in Schedule 12, condition 18 and Requirement 10.</p>

<p><b>Notification to Kingfisher</b></p> <p>Notification 6 para (7) to Kingfisher should be 14 days not 10.</p> <ul style="list-style-type: none"> <li>• Applicant to change and remove email address</li> </ul>	<p>The Applicant has updated the dDCO as follows:</p> <p><b>Notifications and inspections</b></p> <p><i>(7) The Kingfisher Information Service of Seafish, must be <u>informed notified electronically</u> of details of the vessel routes, timings and locations relating to the construction of the authorised project or any part thereof <u>by email to kingfisher@seafish.co.uk</u>: —</i></p> <p><i>(a) at least <u>ten working fourteen</u> days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and</i></p> <p><i>(b) as soon as reasonably practicable and no later than 24 hours of completion of all offshore activities.</i></p>
<p><b>Requirements for turbine lighting</b></p> <p>Sustaining of turbine ID lighting as an informal aid to navigation by fishing vessels to be drafted to THLS satisfaction with cross-reference in the FCLP.</p> <ul style="list-style-type: none"> <li>• Applicant to draft by D5</li> </ul>	<p>The Applicant has updated the dDCO as follows:</p> <p><b>Pre-construction plans and documentation</b></p> <p><i>(j) An aids to navigation management plan to be approved in writing by the MMO following consultation with Trinity House, to include <u>details of any ID lighting and details of</u> how the undertaker will comply with the provisions of condition 7 for the lifetime of the authorised scheme.</i></p>
<p><b>Construction monitoring</b></p> <p>Discussion needed with THLS regarding traffic monitoring to review drafting.</p> <ul style="list-style-type: none"> <li>• Applicant to take up with THLS and propose solution at D5</li> </ul>	<p>The Applicant has updated the dDCO as follows:</p> <p><b>Construction monitoring</b></p> <p><i><u>5) Construction monitoring must include vessel traffic monitoring by automatic identification system for the duration of the construction period. A report must be submitted to the MMO and the MCA at the end of each year of the construction period.</u></i></p>

<p><b>Notification of cable exposure</b></p> <p>Consideration to DML or FCLP to include timely notification for safety to fisherman of any cable exposure.</p> <ul style="list-style-type: none"> <li>• Applicant to present at D5</li> </ul>	<p>The Applicant has updated the dDCO as follows:</p> <p><b>Notifications and inspections</b></p> <p><i>(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office. <u>In case of exposure of cables on or above the seabed, the undertaker must within five days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.</u></i></p>
<p><b>Relevant Body in Condition 10(4)</b></p> <p>Applicant to define relevant body (Natural England) in Part 4 Conditions item 10(m).</p>	<p>The Applicant has clarified the drafting within the revised dDCO as follows:</p> <p><b>Pre-construction monitoring and surveys</b></p> <p><i>(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with <del>the relevant statutory nature conservation bodies</del> <u>Natural England.</u></i></p>
<p><b>Documents to be Certified version control:</b></p> <p>Document version control column to be added to document schedule.</p>	<p>The Applicant has updated Schedule 13 (Documents to be Certified) to include columns to indicate the document number, version and date of publication for each document.</p>
<p><b>Explanatory note: hard copies</b></p> <p>Thanet DC or Kent CC to be a repository of hard copies.</p>	<p>The Applicant has liaised with Thanet District Council and Kent County Council to ask where the hard copy documentation would be placed. Upon confirmation of this information the Applicant will insert this information into</p>

<ul style="list-style-type: none"><li>• Applicant to liaise with relevant body to ensure willingness to host hard copy document set and adapt drafting accordingly.</li></ul>	the dDCO before the close of Examination.
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