

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 19 to Deadline 5 Submission: Written
Summary of Vattenfall's Oral Case put at the Issue
Specific Hearing 8 - Biodiversity, Ecology and
Natural Environment Considerations

Relevant Examination Deadline: 5

Submitted by Vattenfall Wind Power Ltd

Date: April 2019

Revision A

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Date of Approval:	April 2019
Revision:	A

Revision A	Original Document submitted to the Examining Authority
N/A	
N/A	
N/A	

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1 Introductory Remarks

- 1 This note summarises the Applicant's case as presented at the Issue Specific Hearing 8 held on 16 April 2019 at the Discovery Park, Ramsgate Road, Sandwich (the "ISH8").
- 2 The note follows the structure of the Agenda for the Issue Specific Hearing on 16 April 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.
- 3 This note provides an oral summary of the representations made by the Applicant (Vattenfall Wind Power Ltd) to Agenda Item 8 of ISH8. Representations made to Shipping and Navigation and Commercial Fisheries during ISH8 are provided in Appendices 12 and 20 of the Applicant's Deadline 5 Submission.
- 4 The Panel suggested that Agenda Item 7 ("Construction Effects at Sea and on Land") should be deferred to the third set of written questions. As such, the Applicant did not provide oral representations on this Agenda Item.
- 5 The ExA wished to deal with this Agenda Item discretely to allow adequate time for a clear run at agenda items 5 and 6 the following day.
- 6 The approach at ISH3 was adopted, where action points for IPs not in attendance were captured through the action list for Deadline 5.

1.2 Introduction of the Participating Parties

- 7 Scott Lyness of Counsel (Landmark Chambers) spoke on behalf of the Applicant.
- 8 Oral representations were made on behalf of the Applicant by the following:
 - Scott Lyness (SCL);
 - Sean Leake (SEL);
 - Sean Sweeney (SS); and
 - Sally Kazer (SK).

2 Agenda Item 8 - Biodiversity, Ecology and Natural Environment Considerations

- 9 **The ExA stated that action points for IPs not in attendance would be captured in the Action List (PINS Ref EV-045).**
- 10 **ExA requested an updated on SoCG with Natural England.**
- 11 SEL began by explaining that the Applicant is continuing to liaise with the relevant IPs to conclude the SoCG process for Deadline 6. SEL highlighted that the Applicant is arranging a meeting with Natural England ('NE') ahead of concluding the SoCG for Deadline 6. This may preclude some certainty at Deadline 5 but he acknowledged the need to include as much information as possible ahead of the REIS publication.
- 12 With regards the screening exercise for assessing the SEZ, SEL explained that the Applicant held an initial discussion with both Natural England and the MMO introducing the SEZ. In general terms it is a benefit, which was noted and welcomed by NE. This is reflected in the most recent SoCG. There was some discussion on whether a full reiteration of the RIAA is required, but the Applicant did not understand there to be any dispute with the approach of preparing the addendum.
- 13 **The ExA asked how the potentially higher density of turbines caused by the SEZ had been considered.**
- 14 SEL responded that this was a consideration for the core topic areas contained within the annexes; however, the minimum spacing does stay the same. The overall swept area for offshore ornithology and the footprint for benthic ecology both also stay the same. Micrositing, which is the main mitigation measure for benthic ecology, will still be possible and is well established especially given the background of the existing Thanet Offshore Wind Farm.

2.2 (a) Offshore Ornithology

(a)(i) Red Throated Diver of the Outer Thames Estuary SPA

- 15 **The ExA acknowledged that a lot of work has been carried out in the interim but noted that NE still cannot accept no adverse in combination.**

- 16 SCL confirmed that this is the latest position. With regards displacement and the SEZ, the Applicant has set out the in combination assessment work for RTD and identified that in all preceding projects it has been concluded that there would be no adverse effect on integrity (AEoI). It is unclear why NE take a different view. In addition, the position of the Applicant was that there would be no additional effect arising from the project. The revised distance between the SPA and TEOWF is 7.6 km, is within a 5% margin of the maximum distance that Natural England has identified from the London Array OWF post-construction study that red-throated divers might show displacement behaviour from an OWF. At such a distance the scale of any displacement effect will most certainly not be 100% and with a very high degree of certainty based on an examination in the evidence that Natural England rely on (see Figure 20 of APEM 2016) it can be stated to be very close to, if not, zero percent displacement. And overall assessment for RTD showed a mortality of significantly less than a single bird a year as a result of the project, which was not considered to have any appreciable effect on the integrity of the SPA. Based on these factors the Applicant was clear there would be no AEoI.
- 17 In response to a question of whether there was a need to consider moving past stage 2 of the HRA assessment, SCL explained that there was not at present a clearly understood explanation for NE's conclusion but from the Applicant's point of view there should be no need to go beyond Stage 2 AA.
- 18 SEL responded that at present the Applicant has not received any cogent explanation for Natural England's conclusion and as a matter of law there is no issue in the Panel following the Applicant's view over Natural England's.
- 19 **The ExA asked for clarification on the Applicant's understanding of AEoI on gannets for the Outer Thames Estuary SPA.**
- 20 SS confirmed for the ExA that NE have agreed no AEoI in relation to gannets.

(a)(ii) Kittiwake of the Flamborough and Filey Coast SPA

- 21 **The ExA asked for clarification on the Applicant's understanding of AEoI on kittiwake in the Flamborough and Filey Coast SPA.**

- 22 SS confirmed that NE's position at the latest SoCG was an acceptance, similar to that reached with RTD, that the scheme would make no material contribution to in combination effects. The Applicant set out their position at Deadlines 3 and 4, which was that our assessment found that TEOWF alone contributes to a collision mortality rate of between 0.60 and 1.63 kittiwakes. Again it was unclear what the precise basis was for NE's position that there they were unable to rule out an in combination adverse effect on integrity. SL added that subject to the consideration of Hornsea 3, Norfolk Vanguard and this project, the in combination assessment also included existing schemes which had already been approved on the basis that there would be no adverse in combination effects. Moreover, the assessment does not allow for what the Applicant now understands to be reduced build outs since the time of the consent, which would build in headroom when compared with effects which were regarded as acceptable at the time.
- 23 SS noted that in relation to Norfolk Vanguard, Vattenfall had also submitted a note to that examination, which could be provided to this examination, which broadly showed that any impact on population levels would be lower than the anticipated growth in population in the SPA, leading to a conclusion that there would be no in combination adverse effect on integrity, even taking into account Hornsea 3 as well as Norfolk Vanguard and Thanet Extension. The Applicant could update the ExA on how this assessment could apply in this case, notwithstanding that NE had never suggested to the Applicant that such an analysis was necessary, given the view that this project would have any material effect on effects on the SPA.
- 24 **The ExA asked for clarification on the Applicant's understanding of AEol on gannet in the Flamborough and Filey Coast SPA.**
- 25 In response to the ExA's question as to whether Natural England reached agreement that there is no AEol in relation to the gannet feature of the Flamborough and Filey Coast (FFC) SPA in-combination SS explained that although this is the Applicant's understanding it is not currently captured in the latest SoCG (PINS Ref REP4C-008).

(a)(iii) In Principle Monitoring Plan

- 26 The Applicant acknowledged that the Schedule of Monitoring indicated that the IPMP would be secured in both DMLs, as it is in relation to the RTD, and this needs to be amended for Deadline 5 (action).
- 27 **The Panel queried whether the kittiwake would be covered in the IPMP.**

28 SEL confirmed that NE originally requested consideration of both monitoring of seabird flight heights (for kittiwake and other species) as well as the distribution / abundances of red-throated diver, but the most recent discussions since then have been based on red-throated diver only and consideration of either a strategic or site-specific monitoring programme of surveys.

(a)(iv) Any other Matters

29 SK was asked about the Beatrice and Blyth offshore wind farms, specifically how certain decommissioning is and when it is anticipated to occur. SK confirmed that Blyth is at an advanced stage and expected to be decommissioned shortly, with plans for Blyth decommissioning at an early stage and expected to occur. The licence to decommission Blyth was granted in November 2017¹, with the work starting in April 2019 and expected to last 4-6 weeks². Beatrice Demonstrator was initially expected to operate until 2011³.

30 **The ExA requested whether any consultation responses has been received from Scottish Natural Heritage.**

31 The Applicant confirmed that there has been no response from Scottish Natural Heritage (having initially contacted the relevant member of staff on 20 February 2019 and again on 3 April 2019) and noted that this may be flagged within the REIS.

32 **In relation to the Thanet Coast and Sandwich Bay SPA, the ExA questioned whether the saltmarsh is a supporting habitat.**

33 SEL explained that there are some conflicting documents for the SPA about this matter, and added that the inclusion of these concerns from NE in submissions to the examination is likely to be a hangover which has not caught up with the removal of Option 2. This would be checked with NE.

34 **The ExA requested clarification for the rationale of including the ringed plover plan into the DCO.**

35 SEL clarified that the ringed plover has been included in the DCO because when reviewing the Schedule of Monitoring it became clear that it needed to be secured.

¹ <http://portofblyth.co.uk/decommissioning-licence-approved/>

² <https://www.eonenergy.com/about-eon/media-centre/eons-blyth-offshore-wind-farm-to-be-decommissioned-bringing-to-a-close-its-pioneering-contribution-to-the-development-of-renewable-technology/>

³ <http://www.hi-energy.org.uk/Hi-energy-Explore/talisman-beatrice-project.htm>

2.3 (b) Marine Mammals

(b)(i) Harbour Porpoise of the Southern North Sea SAC

36 **The ExA requested an update on the status of the potential for AEoI on the Southern North Sea SAC.**

37 SK confirmed that the outstanding HRA related points for the Southern North Sea SAC relate to the Site Integrity Plan (with a note regarding the piling protocol, addressed separately). To confirm that The SoCG to conclude no AEoI on all points – requires further discussion with NE and the MMO as regards the SIP. If it were possible to separate out the management of the SIP (which is outside the Applicants control) from the conclusion of AEoI, this would benefit the SoCG – to be discussed with NE.

38 **The ExA requested an update on the Site Integrity Plan from the Applicant.**

39 SEL confirmed that an updated SIP was submitted at Deadline 4 and the Applicant is awaiting feedback on this. SCL explained that the outstanding issue is the appropriate regulatory authority to manage the SIP, and accordingly it may assist to separate this matter from the question of AEoI. The SIP as drafted can provide certainty and discussion is ongoing in relation to finer details such as timings.

(b)(ii) Piling Protocol

40 **The ExA acknowledged requests from the MMO and Natural England for amendments to be made to condition 16 to allow cessation of piling. This will be addressed at ISH9.**

2.4 (c) Offshore Designated Sites

(c)(i) Chalk reef of the Thanet Coast SAC

41 **The ExA asked the Applicant if any agreement with Natural England has been reached in relation to an AEoI on the Thanet Coast SAC.**

42 SEL explained that the cable exclusion zone ensures that direct impact with the site (and its features) is avoided. This design has been welcomed by Natural England.

43 SEL highlighted that the matters of in-combination effects on the site are in relation to on-going maintenance dredges at Ramsgate harbour and Natural England have concerns about increased sedimentation. SEL noted that it is agreed with Natural England that there will be no AEoI in relation to the project alone.

- 44 SEL explained the panel that Natural England have requested that the Applicant provide a document which consolidates the information provided by the Applicant during the examination process. Natural England have also requested illustrations of sediment deposition to be included in the submission. SEL noted that this is contrast to discussions held within the Evidence Plan and so discussions were on-going with regard to the best methodology to provide illustration. SEL confirmed that this consolidated note (with associated illustrations) will be submitted by the Applicant into Deadline 5.
- 45 **The ExA noted that this information will need to be submitted at least one week prior to the publication of the REIS. Therefore, it would be preferable to be submitted as a late deadline 5 (to be accepted at the ExA's discretion) than to be submitted into Deadline 5A.**
- 46 SEL confirmed that the Applicant would submit the note as a (potentially) late Deadline 5 Submission. This will enable the Applicant to discuss the note with Natural England during a pre-planned meeting (after Deadline 5) in order to provide the ExA with as much information as possible.

2.5 (d) Inter-tidal Saltmarsh Habitats

(d)(i) Saltmarsh Mitigation, Reinstatement and Monitoring Plan

- 47 **The ExA requested an update on the status of agreement of the Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP) with Natural England (and other IPs).**
- 48 SEL read out an agreed position with Natural England for the SMRMP –

“Overall, Natural England are content that the SMRMP has been successfully updated following Natural England’s comments at Deadline 3. As a result, Natural England agree the current document provides the scope to monitor, mitigate and reinstate the saltmarsh within Pegwell Bay following construction in accordance with best practice and Natural England advice. However, Natural England still advise that Horizontal Directional Drilling (HDD) under the saltmarsh still represents the best landfall option, as there is more certainty in the environmental outcome.”

- 49 SEL noted for the benefit of the Panel that KCC no longer view the saltmarsh as being within their jurisdiction. It was agreed that the Applicant would consider the jurisdictional boundary between the MMO and other authorities and update the ExA as soon as practicable, if possible by ISH9.
- 50 SEL also noted that it was the Applicant's understanding that the SMRMP had been broadly agreed with Kent Wildlife Trust also.
- 51 **The ExA noted that the SMRMP is currently secured in Schedule 11 of the draft DCO and questioned whether it is to be exclusively enforceable by the MMO. The ExA noted that it is a dynamic jurisdiction (and environment).**
- 52 The Applicant noted that they would consider this and provide a considered view during ISH9 on the item raised. It was also agreed that the Schedule of Mitigation needed to be specifically identified in the DCO as opposed to relying on the ES containing the relevant mitigation.
- 53 **The ExA also noted that they would like to further discuss whether the reinstatement aspect as outlined in the plan is adequately secured in the DCO within ISH9.**
- 54 **The ExA requested clarification from the Applicant on how the commitment to not install cable protection in the intertidal zone has been secured in the draft DCO.**
- 55 SEL explained that this commitment was made throughout the relevant ES chapters, including the offshore project description, and is also included within the Schedule of Mitigation; and so, this commitment must be adhered to.
- 56 **The ExA queried whether a commitment to not install cable protection in the intertidal zone be included explicitly within the draft DCO.**
- 57 The Applicant agreed to consider this amendment to the draft DCO. This was recorded as an action arising from ISH8.
- 58 **The ExA suggested that the Schedule of Mitigation should be a certified document and as such included in Schedule 13.**
- 59 This was agreed by the Applicant. This was recorded as an action arising from ISH8.

(d)(ii) Seasonal restriction

- 60 **The ExA noted that the seasonal restriction is secured in the transmission dML in the preconstruction condition but does not explicitly state the timings of the restriction. The ExA queried whether the Applicant was willing to consider this and whether it would sit more appropriately within a different condition to ensure that it is adhered to both in the construction and O&M phases of the project.**
- 61 SEL explained that the Applicant has been engaged in a similar discussion with IPs (Natural England and the MMO) regarding this matter. The original drafting had been undertaken so that the seasonal restriction was captured within the programme conditions of the dML in order to aid IPs post-consent (if granted). However, it is the Applicant's understanding that it is logistically easier for the IPs to discharge this restriction if it is a standalone condition. Therefore, the Applicant has agreed with the IPs to revise the DCO to provide for the restriction in a standalone condition.
- 62 **This proposed revision was welcomed by the ExA. The ExA also noted that the Schedule of Mitigation would need revising to account for the change in drafting in the DCO.**
- 63 The Applicant agreed to revise the reference to the seasonal restriction within the Schedule of Mitigation. This was recorded as an action arising from ISH8.

2.6 (e) Goodwin Sands proposed Marine Conservation Zone

- 64 The ExA requested an updated from the Applicant on IPs positions on the pMCZ assessments submitted.
- SEL explained that the Applicant will consider having a separate condition for MCZ monitoring within the DML for clarity (action).

(e) (iv) Pre and post-construction benthic monitoring

- 65 **The ExA requested an updated on the status of agreement on benthic monitoring with the relevant IPs.**
- 66 SEL explained that the MMO have requested additional information regarding benthic monitoring within the designated sites and this is being provided to them in parallel with Natural England.

- 67 SEL also noted that it is agreed with the MMO that there will no significant effects on the physical processes/ environment from turbid wakes. Therefore, SEL noted that if the seabed conditions are not impacted then it is highly unlikely that there would be an impact on the benthos. Therefore, it is the Applicant's position that monitoring the benthos for effects of turbid wakes would be disproportionate.
- 68 **The ExA requested if the Goodwin Sands monitoring condition could be made more explicit for the definition of 'certain works'.**
- 69 SEL explained that the Applicant will consider having a separate condition for the MCZ monitoring requirements within the dML to provide clarity. This was taken as an action.
- 70 **The ExA noted that the Dover Dredging application decision is current subject to a Judicial Review and enquired whether the effect this may have on the programme of the dover dredging application has been considered by the Applicant.**
- 71 In relation to the Dover dredging application, SEL confirmed that the Applicant was aware that this decision is going through the judicial review process and that the potential consequences for a temporal overlap may need to be considered. The spatial overlap remains very low. By deadline 5, the Applicant anticipates being able to provide further updates to the Goodwin sands MCZ note and will adjust DML wording accordingly.

2.7 (f) Any other Environmental Construction Matters

- 72 **The ExA requested that the Applicant clarify the changes made to the Outline Operations and Maintenance Plan (as submitted in Deadline 4), in particular the revised colour coding of activities that may require a marine licence.**
- 73 SEL clarified that the traffic light system for additional marine licenses for certain works shows some as amber following discussions with the MMO that made clear that if those activities were exceeded further marine licensing would be required. Notwithstanding this, the Applicant has confidence in what has been assessed. Those not amber are minor activities that would not need a marine license. These matters merited clarification and the Applicant amended the presentation of the document accordingly.
- 74 **The ExA requested an update from the Applicant on the progress of the Crown Estate's plan level HRA and when this was likely to be delivered.**

- 75 In relation to Crown Estate matters, SCL explained that the Applicant is not aware of any specific updates regarding the plan-level HRA.
- 76 The Crown Estate explained that the indicative timeline would have the HRA finishing just before or just after the close of Examination. In terms of agreement for lease, discussions have commenced and the end of August has been set as a goal completion date.
- 77 **The ExA emphasised that they would like to be in an informed position on the findings of the plan level HRA prior to reporting to the Secretary of State, noting that they cannot consider information submitted beyond 11 June 2019.**
- 78 **The ExA noted that The Crown Estate Round 4 decision information is available in the public domain but would not be considered in this examination unless it was submitted as relevant. The ExA also noted that Thames Approaches and the Kent Coast are two of the excluded regions for Round 4 developments.**