



The Planning Inspectorate Yr Arolygiaeth Gynllunio

Application by Vattenfall Wind Power Limited for the Thanet Extension Offshore Wind Farm (EN010084)

Examining Authority commentary on the draft DCO

Initial responses to this commentary are sought by **Deadline 6 (28 May 2019)**. Where the Applicant or any IP or Other Person needs to comment on submissions or drafting submitted at Deadline 6, these comments are due at **Deadline 7 (6 June 2019)**. The Applicant is requested to submit a final preferred dDCO at **Deadline 7 (6 June 2019)**. DCO submissions at Deadline 8 should be strictly limited to matters relevant to the material change request and to a few matters where earlier submissions cannot be provided, as identified in the table below.

Environment Agency response (BLUE)

13 May 2019

Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
5.	Art 2	<p><i>"commence" (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for archaeological investigations, pre-construction surveys and monitoring, and seabed preparation and clearance (b) in respect of any other works comprised in the authorised project, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, environmental surveys, investigations for the purpose of assessing ground conditions, diversion and laying of services, temporary structures or hard standing, the temporary display of site notices or advertisements and the words "commencement" and "commenced" will be construed accordingly; ...</i></p>	<p>Interpretation: "commence" The definition of commence retains scope for some substantial operations relevant to environmental effects to take place in both the marine and terrestrial environments before the formal commencement of the authorised development and the discharge of relevant requirements and/ or DML conditions.</p> <ul style="list-style-type: none"> • In the marine environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown <u>underlined</u> in column 3 might lead them to have significant effects that should be taken into account prior to the finalisation of relevant plans or strategies and in decisions to discharge any of the following DML conditions (nb – where conditions are repeated in both Sch 11 and Sch 12, the reference here to a condition to Sch 11 shall be taken to refer also to a condition for the same purpose in Sch 12): <ul style="list-style-type: none"> • 8: (aids to navigation and the need for any notice to and direction on these by Trinity House); and • 13: (submission and approval of any preconstruction plans or documents) • 20: (the fisheries liaison and co-existence plan) 	<p>Applicant, MMO, Natural England, Historic England, Thanet District Council (LPA), Dover District Council (LPA), Kent County Council, Trinity House, Maritime and Coastguard Agency, Thanet Fishermen's Association.</p>

			<p>• In the terrestrial environment: are there circumstances in which the nature or scale of any of the pre-commencement works shown <u>underlined</u> in column 3 might lead them to have significant effects that should be taken into account prior to the finalisation of relevant plans or strategies and in decisions to discharge any of the following requirements:</p> <ul style="list-style-type: none"> • R14 (access management); • R17 (highway access); • R18 (Construction Environmental Management Plan); • R19 (temporary fencing); • R21 (Contaminated land and groundwater plan); • R22 (Construction noise and vibration management plan); • R23 (Construction traffic management plan); • R24 (Onshore archaeological written scheme of investigation); and/ or • R25 (Landscape and Ecological Mitigation plan)? <p>c) Generally: as a consequence of drafting in Art 2, are there any remaining proposals for precommencement works that are not (for reasons that must be stated) subject to appropriate control in the dDCO?</p> <p>IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.</p>	
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Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
23.	Art 36	<i>[As above]</i>	<p>Arbitration: application to determinations by statutory and regulatory authorities</p> <p>As currently drafted, Art 36 might apply to “any difference under any provision of this Order” which concerned a statutory/ regulatory body or public authority. There are multiple examples of this, affecting consents or approvals to be given by street authorities (Art 8(3) and Art 10(3), highway authority (Art 11), owners of watercourses (Art 14(3)), etc..</p> <p>The arbitration procedure would not apply to differences between the Applicant and any of the relevant bodies concerned by the requirements listed in Art 37(2) (those bodies covered by Sch 10, where an appointed person appeal procedure is set out). This is because Art 36 only applies “unless otherwise provided for”, and Art 37 would be such an alternative provision.</p> <p>However, as currently drafted, this provision and Art 37 mean that there could be differences</p>	<p>Applicant, Thanet District Council (LPA), Dover District Council (LPA), MMO, Maritime and Coastguard Agency, Trinity House, Kent County Council, Environment Agency, Natural England, Historic England and any other relevant public authority, statutory or regulatory body</p>

			<p>between how some disputes would be handled, even between the same parties. For example, a difference with a highway authority under a requirement in Art 37(2) (such as R17) would be handled in accordance with Sch 10, but a difference with a highway authority under Art 11(1)(b) would appear to be handled under the arbitration provisions.</p> <p>a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood?</p> <p>b) If so, is it sufficiently clear as to whom (particularly to statutory/ regulatory bodies or public authorities) and when (in what particular circumstances) the arbitration provisions should apply and whether the cut-off between arbitration and a Sch 10 process is sufficiently clear and justified?</p> <p>There is an argument that if these distinctions are to be retained, they need to be made explicit on the face of the dDCO, in the same way that the matters to be dealt with by way of an appeal to an appointed person has been listed in Art 37(2). The Applicant is requested to set out a form of words that add additional clarity.</p> <p>Having looked at the arbitration provisions in light of what we are concerned with in the draft DCO, we believe the provisions are sufficiently clear for our purposes and we do not require/request for them to be amended.</p>	
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Comment No.	Part of DCO	Relevant extract from DCO (for ease of reference)	Commentary	Response sought from
24.	Art 36	<i>[As above]</i>	<p>Arbitration: application to determinations under Requirements (Schedules 1 and 10) and Conditions (Schedules 11 and 12)</p> <p>Is it sufficiently clear and, if not, is any further drafting required to place beyond doubt that the provisions of Art 36 do not apply to determinations under, discharges or appeals in relation to Requirements (Schs 1 and 10) or to determinations under and discharges of Conditions in the DMLs (Schs 11 and 12)?</p> <p>As already advised about having looked at the arbitration provisions in light of what we are concerned with in the draft DCO, we believe the provisions are sufficiently clear for our purposes and we do not require/request for them to be amended.</p>	<p>Applicant, Thanet District Council (LPA), Dover District Council (LPA), MMO, Maritime and Coastguard Agency, Trinity House, Kent County Council, Environment Agency, Natural England, Historic England and any other relevant public authority, statutory or regulatory body</p>