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Our ref: 283264
Your ref: EN010084



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BY EMAIL ONLY

Dear Sirs

EN010084 Thanet Extension offshore Windfarm – Natural England’s Response at Deadline 6

- 1 The following constitutes Natural England’s formal statutory response. We have provided comments on documents submitted by the applicant at Deadline 5 and in the period leading up to Deadline 6. The following documents have been reviewed:
 - Sand Wave Clearance, Dredging and Drill Arising: Disposal Site Characterisation (Appendix 27 to Deadline 5 Submission)
 - SAC and MCZ Clarification Note and Annexes (Appendix 32 to Deadline 5 Submission)
 - Responses to Natural England Residual Goodwin Sands pMCZ comments (Annex A to Appendix 15 to Deadline 6 Submission)
 - Responses to Natural England on the potential sand wave clearance and displacement of material from Goodwin Sands pMCZ (Annex B to Appendix 15 to Deadline 6 Submission)
 - Revised Draft Development Consent Order – Tracked Changes (Annex C to Appendix 31 to Deadline 5 Submission)
 - Response to ExA Action Points arising from Issue Specific Hearing 8 – Natural Environment and Commercial Fishing (Appendix 8 to Deadline 5 Submission)
 - Applicants Response to ISH8 Action Points 1(b), 3(d) and 9(b) (Annex A to Appendix 8 to Deadline 5 Submission)
 - Schedule of Monitoring – Revision B (Appendix 6 to Deadline 5)
 - Schedule of Mitigation – Revision C (Appendix 3 to Deadline 5)
 - Applicant's response to Natural England's Representation (Annex A to Appendix 3 to Deadline 5)
- 1.1 At Deadline 6 Natural England have also submitted to the applicant an updated and finalised SoCG which we hope has been passed onto the Examining Authority (ExA). We have also submitted to the Examining Authority (ExA):
 - Responses to Examiner Questions 3 (ExQ3);
 - Comments on interested parties responses to ExQ2;
 - Comments on the REIS (section 9 of this document)
 - Answers to relevant questions from the ExA’s commentary on the dDCO
- 1.2 As highlighted above some documents have been submitted by the applicant to Natural England

between Deadline 5 and 6. As a result, some documents that have been submitted at Deadline 5 have automatically been superseded by these additional notes. Thus some of these documents are already “out of date” and most likely not in line with Natural England’s current position. We therefore point the Examining Authority to our SoCG with the applicant in the first instance.

1.3 Please see below for comments on the documents outlined above.

2 Offshore Benthic and MCZ Issues

2.1 The following documents have been reviewed:

- Sand Wave Clearance, Dredging and Drill Arising: Disposal Site Characterisation (Appendix 27 to Deadline 5 Submission)
- SAC and MCZ Clarification Note and Annexes (Appendix 32 to Deadline 5 Submission)
- Responses to Natural England Residual Goodwin Sands pMCZ comments (Annex A to Appendix 15 to Deadline 6 Submission)
- Responses to Natural England on the potential sand wave clearance and displacement of material from Goodwin Sands pMCZ (Annex B to Appendix 15 to Deadline 6 Submission)

2.2 Natural England acknowledge and welcome the further information that has been presented to ourselves between Deadline 5 and 6 regarding our concerns, which are primarily associated with Goodwin Sands pMCZ.

2.3 Natural England’s latest positions regarding Goodwin Sands pMCZ and the MCZ assessment are outlined within the latest version of the SoCG. We have provided a brief narrative of the discussions that have taken place since Deadline 5.

2.4 On the 2nd May the applicant and ourselves had a productive meeting to discuss some of the remaining offshore benthic issues. This was primarily centred around the pMCZ. As highlighted in *Appendix 32 to Deadline 5 Submission: SAC and MCZ Clarification Note and Annexes* Natural England had raised specific queries across a few variables regarding sediment plumes and their associated impacts upon the designated features of the pMCZ. This document did clearly answer many of our concerns. However, coming out of the meeting and from reviewing the document we still had some remaining issues, primarily around the Applicant’s assertion they should not consider extraction as a pressure, which we advised should be considered in line with our standardised *Advice on Operations* within our conservation advice packages. *Annex A to Appendix 15 to Deadline 6 Submission: Responses to Natural England Residual Goodwin Sands pMCZ comments* provides reasoning from the applicant why they deem extraction should not be considered.

2.5 Natural England continued to disagree with this assertion, as although the applicant had committed to dispose of material within 500 m of the Goodwin Sands pMCZ, the information we had received at this point indicated that due to the dominant sediment transport pathway the sediment would not be re-worked in to the MCZ and thus extraction would be occurring. Following a subsequent telecall to discuss this position, it was realised that the applicant had presented the wrong information regarding the transport pathway and in fact it moves in a southerly direction. This is highlighted within *Annex B to Appendix 15 to Deadline 6 Submission: Responses to Natural England on the potential sand wave clearance and displacement of material from Goodwin Sands pMCZ*. Natural England is therefore content that sediment will be reworked into the site, and that further examination of extraction as a pressure will not affect the

outcome of the assessment. This is alongside the commitment from the applicant to dispose of sediment within 500 m of Goodwin Sands pMCZ, however this should be sufficiently secured within the DML / DCO.

- 2.6 As the ExA will see some of the MCZ points are still under discussion. Natural England is still not content that we have seen evidence to support the conclusion that rock protection will become buried by the sediment feature. If this cannot be agreed then the assessment should be updated to reflect that there will be footprint loss of feature instead, and pre-construction surveys will need to be drawn upon in order to validate any conclusions drawn about the significance of this loss. In addition, to feel confident in agreeing to the overall conclusion that the project will not hinder the conservation objectives of the site, Natural England has requested that all the ad hoc parts of the assessment are collated into a single document in order to provide a clear audit trail. Natural England does not anticipate that any further elements are missing and envisage that agreement will be reached by the next deadline

3 Revised Draft Development Consent Order – Tracked Changes (Annex C to Appendix 31)

- 3.1 *Deadline 5A Comments* – Natural England raised a number of comments at Deadline 5A regarding the dDCO, mainly concerning the wording associated with some of the monitoring conditions. We expect the applicant to respond to these at Deadline 6 and we have had further discussions with the applicant since deadline 5A. We shall await any changes to the dDCO and comment on these at Deadline 7.
- 3.2 *Definition of Commencement* – In response to the EXA's commentary on the dDCO Natural England has responded to comment number 5. For completeness we have copied our response below.
- 3.2.1 The definition of commence is currently disagreeable. The exclusion of seabed preparation works and clearance from the definition of commence means that the impact to the benthic marine environment will be able to proceed without sufficient regulatory oversight. By the very nature and size of these works they are likely to lead to impacts that have significant effect on the environment. These works encompass the vast majority of the environmental impacts to the seabed and must be appropriately mitigated. The required mitigation must be appropriately regulated and secured through a condition. The applicant's proposed condition 23 does take some steps to secure mitigation by submissions of methodology for approval. However, the condition refers to the biogenic reef mitigation plan which is currently expected 4 months prior to commencement and is unlikely to be approved until much nearer to commencement. This would seem to specifically contradict the intent of the new definition and condition i.e. it doesn't extradite preparation works from the pre-construction commencement documentation / conditions and timings. Additionally, there is little definition of what that methodology would contain and the only mitigation secured is the biogenic reef mitigation plan and archaeological plans. There are many other mitigations / plans that might need to be included depending on the works proposed. Furthermore, the condition has no proposed time for when the methodology needs to be submitted, or how long the regulator can expect to consider the information provided. The condition needs to be amended to ensure that all mitigation required for the pre-commencement works is secured. Additionally, a reasonable time period must be given within the condition for submission, review and approval of this information. However, it is questionable if this can be achieved due to the need to cross reference much of the mitigation with the requirements of condition 13. Previously developers, and regulatory bodies have used the wording at condition 13 (1) to avoid this issue: *The licensed activities or any part of those*

activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO. The pre-construction works have been considered as their own part of construction, and documentation that is submitted for them need only be relevant to that part. This has worked for all previous DCO offshore wind projects and Natural England, therefore, questions if there is a necessity for the proposed change. This current position of disagreement is highlighted within the latest SoCG submitted to the ExA at Deadline 6.

- 3.3 *Arbitration* – Natural England is currently in disagreement with the applicants current wording and position on arbitration, this is reflected in the most recent SoCG. We refer the ExA to our original comments back at the relevant representations stage. In addition, we have commented on some of the ExA's dDCO commentary regarding arbitration.
- 3.4 *Certified Plans and Documents* - Currently, there does not seem to be any provision with the DMLs stating that the documents in Schedule 13 must be complied with as certified. Article 35 in Part 7 of the DCO "Certification of Plans" includes sub-paragraph (4) stating: *(4) Each programme, statement, plan, protocol or scheme listed in Schedule 13 must be complied with as certified.* However, as the MMO is the regulator in terms of the DMLs, it is Natural England's understanding that the MMO is unable to enforce anything set out in an Article of the Order in a schedule which is not part of the DMLs. Therefore, to ensure compliance by the applicant with the documents listed in schedule 13, the provision highlighted above should be listed in the DMLs. This will allow the MMO to effectively enforce and regulate the commitments made within these documents, but will also provide reassurance to ourselves that the applicant is bound to enact the mitigation and monitoring commitments made in many of these documents.
- 3.4.1 *Saltmarsh Mitigation, Reinstatement and monitoring plan (SMRMP) conditions* – Although a lot of progress has been made regarding this plan Natural England is particularly concerned by the lack of requirement for an updated version of the plan to be submitted to the relevant authorities prior to construction. This will ensure the monitoring and mitigation currently outlined within the plan is still appropriate at the time of any works being carried out. For example, the SMRMP is not outlined in Schedule 12, Part 4, condition 11 and condition 13. This is where the relevant pre-construction documents are listed and when they should be submitted to the MMO (and its advisers) for approval. In addition, although the monitoring associated with the SMRMP is secured in condition 15 and 17, any requirement to carry out any mitigation associated with the plan does not seem to be secured.

4 Schedule of Monitoring – Revision B (Appendix 6 to Deadline 5)

- 4.1 Natural England is overall content with the schedule of monitoring that is currently outlined within this document. However, we have some slight concerns regarding the commitments around the monitoring associated with sandwave clearance within the pMCZ. There seems to be an opposing position between some of the commitments made within the DML between pre and post construction surveys. As highlighted within Natural England's Deadline 5A response there needs to be equal effort between the pre-construction and post-construction surveys to successfully measure any change following sandwave clearance. Currently the pre-construction commitments within the DML are less clear than what is stated within the post-construction section (see condition 17 (5)). Following recent discussions, the Applicant is aware of these concerns and has highlighted changes to the these conditions will be made at Deadline 6. Natural England shall review these in due course.

5 Applicant's response to Natural England's Representation (re Schedule of Mitigation) (Annex A to Appendix 3 to Deadline 5)

5.1 Natural England has reviewed the applicant's responses to the points we raised in relation to the previous version of the schedule of mitigation and have no further comments to make currently.

6 Schedule of Mitigation – Revision C (Appendix 3 to Deadline 5)

- 6.1 Overall, Natural England is content with the schedule of mitigation that is outlined within this document. However, see below for further information.
- 6.2 At mitigation reference 5.5 in the section associated with Chapter 2.5 Benthic Subtidal and Intertidal Ecology, it is stated "*Where sandwave clearance is required within the Goodwin Sands pMCZ material should be disposed of as close as practicable to the pMCZ.*" This should be updated by the applicant to reflect their updated commitment which is currently: "*[The] Applicant has committed (and secured) that all sediment disturbed from Goodwin Sands pMCZ from sand wave clearance (if required) would be disposed of within 500 m of the site.*"
- 6.3 Within the onshore biodiversity mitigation section, there are many references to landfall option 2 (primarily sections 5.1, 5.4 and 5.8). Option 2 has been confirmed by the ExA and the Applicant as being removed from the project envelope. Natural England question why there is still reference to this option here?

7 Response to ExA Action Points arising from Issue Specific Hearing 8 – Natural Environment and Commercial Fishing (Appendix 8 to Deadline 5 Submission)

7.1 Natural England has no further comments regarding the Applicant's responses to the ExA's Action points arising from Issue Specific Hearing 8. However, please see section 6 for further comments regarding Annex A associated with Appendix 8 at Deadline 5.

8 Applicants Response to ISH8 Action Points 1(b), 3(d) and 9(b) (Annex A to Appendix 8 to Deadline 5 Submission)

- 8.1 *Sections 3.4 and 3.5* - Natural England is content that both the MMMP and SIP are secured in the DCO, however, the content of those documents is not. With regard to the SIP, we welcome the inclusion of the possibility of a seasonal restriction. If this were to be secured on the face of the DCO / DML, Natural England would be content to conclude no AEoI in-combination for Thanet Extension. However, Natural England's current advice to all offshore windfarm developments, including Thanet Extension, with the potential to have an AEoI on the SNS SAC in-combination is that we are unable to conclude no AEoI until there is a mechanism in place to manage all of the SIPs from all the different projects.
- 8.2 We have not provided any further detailed comment on the ornithological sections as much of the information provided by the applicant in this document has already been reviewed and commented on by Natural England, with our latest positions highlighted within the SoCG submitted at Deadline 6. However, the Applicant refers in Table 1 and in Section 3.2 to Norfolk Vanguard's Offshore Wind Farm Offshore Ornithology Assessment, and the in-combination conclusions made by Vattenfall in their deadline 5 submissions for Norfolk Vanguard. However, since that submission Norfolk Vanguard have substantially refined their Rochdale envelope twice to reduce the number of collisions in response to Natural England's concerns regarding in-

combination adverse effects on integrity for gannet and kittiwake from Flamborough and Filey Coast SPA, including raising all turbines a further 5 m off the sea surface. In that context we would draw the ExA's attention to 'Natural England's Interim Position Statement at Deadline 7 for Offshore Ornithology' and 'Natural England's Comments by species on Vanguard Deadline 6 (REP6-021) and Deadline 6.5 (AS-043) information in respect of Norfolk Vanguard', the latter including our detailed judgement on in-combination impacts on Flamborough & Filey Coast SPA kittiwakes (<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010079/EN010079-002878-DL7%20-%20Natural%20England%20-%20Deadline%20Submission.pdf>). These issues are subject to ongoing discussions as part of the Norfolk Vanguard examination process.

9 Report on the Implications for European Sites (REIS)

9.1 Documents used to Inform the REIS

9.1.1 As highlighted by the ExA many of the original documents associated with the RIAA have been updated and superseded by newer versions. This is a common theme across not only the RIAA but the Environmental Statement as a whole, with hundreds of clarification notes submitted during the examination period. Natural England have concerns that the original documents will not be updated appropriately to take into account the vast amount of new information that has been submitted since the original application. This makes it very difficult for staff picking up the project post-consent, both within Natural England and across other interested parties. As a result, it is essential that all this new information is either incorporated into the application and RIAA documents or a suitable signposting document is produced highlighting where changes have been made.

9.2 Changes to the Proposed Development during Examination

9.2.1 Natural England are in agreement with the commentary regarding the proposed changes associated with the development. Landfall option 2 did remove many of our key concerns regarding the landfall options particularly associated with the proposed loss of a large area of saltmarsh, which is a supporting habitat of the SPA and a notified feature of the SSSI. However, we still maintain that HDD is the best option associated with the cable landfall. The cable exclusion zone also removed concerns regarding Thanet Coast SAC and the potential damage to the designated features, such as chalk reef. The Structures Exclusion Zone as rightly stated by the ExA was requested to address shipping and navigation concerns raised by interested parties (IPs). However, we agree the only sections of the RIAA which are affected by the introduction of the SEZ are those relating to the Outer Thames Estuary SPA. Natural England's latest position on this can be found within the Technical Topics SoCG which was submitted at Deadline 6.

9.3 European Sites Considered / Potential Impacts / HRA Matters Considered During the Examination

9.3.1 Natural England are in agreement with the commentary provided here by the ExA, in sections 2.1, 2.2 and 2.3.

9.3.2 As correctly stated in section 2.1, we agreed the RIAA has identified all the relevant features of the European sites that may be affected by the proposed development. However, it should be noted there was considerable discussions with the applicant, before Option 2 was removed

from the application, whether the correct features of the Thanet Coast and Sandwich Bay SPA and Ramsar had been identified and whether the habitats in this area were supporting the designated features. We believed that the saltmarsh was a supporting habitat of the SPA and Ramsar and thus there was the potential for an AEol due to the potential permanent loss, whereas the Applicant did not.

9.4 *Stage 1: Likely Significant Effects (LSE)*

9.4.1 Natural England agree with the summarisation of the Applicant's conclusions regarding the qualifying features and the potential impacts for a LSE.

9.5 *Stage 2: Adverse Effects on Integrity*

9.5.1 *Thanet Coast and Sandwich Bay SPA* – As outlined in the latest SoCG at Deadline 6, Natural England are in agreement that the proposed development will not result in an AEol for this particular designated site; this is provided that saltmarsh impacts are ultimately temporary in nature. The applicant has taken on board all our comments regarding the Saltmarsh Mitigation Reinstatement and Monitoring Plan (SMRMP) in order to achieve saltmarsh recovery. This takes into account known best practice regarding working on saltmarsh, has the commitment of regular updates from an ecological clerk of works to quickly respond to any concerns and addresses potential risks regarding topography, which may be a factor in the difference in recovery between the site of the original Thanet cable and the more recent Nemo cable installation. However, as correctly stated and mentioned previously, Natural England do advise that HDD represents the best landfall option, as this results in the need for less extensive mitigation measures and therefore more certainty in the integrity of the saltmarsh post works.

9.5.2 *Thanet Coast SAC* – The narrative provided here by the ExA is an accurate representation of the discussions and responses that have been held and drafted respectively. The ExA correctly concludes that an updated SoCG was provided as a late submission following Deadline 5, in which agreement has been reached with the Applicant that there will be no AEol both alone and in-combination on the Thanet Coast SAC. Comments on the latest Deadline 5 submissions by the applicant can be found in this response, where appropriate.

9.5.3 *Southern North Sea SAC* – The ExA has successfully concluded Natural England's current position within this section. However, for completeness we reiterate the following: Natural England is content that both the MMMP and SIP are secured in the DCO, however, the content of those documents is not. With regard to the SIP, we welcome the inclusion of the possibility of a seasonal restriction. If this were to be secured on the face of the DCO, Natural England would be content to conclude no AEol in-combination for Thanet Extension. However, Natural England's current advice to all offshore windfarm developments, including Thanet Extension, with the potential to have an AEol on the SNS SAC in-combination is that we are unable to conclude no AEol until there is a mechanism in place to manage all of the SIPs from all the different projects.

9.5.4 *Margate and Long Sands SAC* – Natural England have no further comments to make regarding this particular designated site and agree with the commentary provided by the ExA.

9.5.5 *Outer Thames Estuary SPA and assessment of displacement of red throated diver* – Natural England are in agreement with the ExA's narrative associated with this particular designated site.

9.5.6 *Flamborough and Filey Coast SPA – assessment of collision risk or kittiwake and gannet –* Natural England deem this section is an accurate representation of the discussions and positions currently held by the Applicant and ourselves. The latest versions of the SoCG have been submitted at Deadline 6 which outline our current positions with the applicant.

9.5.7 *Assessment of Alternatives, Consideration of IROPI and Compensatory Measures –* Natural England have no further comments with regards to this section. It is an accurate representation of the brief discussions that have taken place regarding alternatives, IROPI and compensatory measures.

For any queries relating to the content of this letter please contact me using the details provided below.

Yours sincerely,

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