

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 25 to Deadline 6 Submission: Applicant's
Comments on the Report on the Implications for
European Sites (RIES)

Relevant Examination Deadline: 6

Submitted by Vattenfall Wind Power Ltd

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1 Introduction

- 1 On 14 May 2019 the Examining Authority, with support from the Planning Inspectorate Environmental Services Team, prepared a Report on the Implications for European Sites (RIES) in relation to the proposed Thanet Extension Offshore Wind Farm (Thanet Extension) Project (Planning Inspectorate reference: EN010084).
- 2 The Applicant has reviewed this report and wishes to make a series of detailed observations on its contents. This document sets out these detailed observations in the following table, in the order that they appear in the RIES.
- 3 The Applicant would wish to highlight that, as evidenced by the most recent Statements of Common Ground (SoCG) with Natural England, there is an agreement of no adverse effect on integrity (AEoI) with respect to the majority of the conclusions drawn within the Report to Inform Appropriate Assessment (RIAA). The relevant SoCG are as follows:
 - Deadline 6 Submission - Appendix 14 - Statement of Common Ground - Natural England - Offshore Ornithology;
 - Deadline 6 Submission - Appendix 15 - Statement of Common Ground - Natural England Technical Topics (excluding Offshore Ornithology, Saltmarsh, and Site Selection); and
 - Deadline 6 Submission - Appendix 16 - Statement of Common Ground - Natural England Project Description, Site Selection and Alternatives; and Saltmarsh.
- 4 Where disagreement exists, for ease of reference the issues are highlighted as follows (noting that all these issues relate to in-combination assessment only – with agreement on no AEoI alone for all cases):
 - Flamborough and Filey Coast (FFC) Special Protection Area (SPA) – in-combination collision risk in kittiwake during operation;
 - Flamborough and Filey Coast (FFC) Special Protection Area (SPA) – in-combination collision risk in gannet during operation;
 - Outer Thames Estuary (OTE) SPA – in-combination displacement in red-throated diver (RTD) during operation; and
 - Southern North Sea (SNS) Special Area of Conservation (SAC) - in-combination disturbance risk (underwater noise) in harbour porpoise during construction.

- 5 To provide important context, the Applicant wishes to record that it has taken a highly precautionary approach to the assessment of impacts on European sites. Consequently, the scope of the assessment is broad and considerable analysis has been provided (and has been incorporated into the RIES). The Applicant's view is that even adopting a highly precautionary approach, the Secretary of State can be satisfied on the basis of the information supplied that there will be no adverse effect on the integrity of any European site.
- 6 It is noted that the question of gannet collision risk at FFC SPA in-combination has arisen late in the day, at Deadline 5 (REP5-077). It is understood that the concern, not previously raised, has been triggered by works on a separate project and that NE will provide evidence at Deadline 6, after which the Applicant will be able to respond.
- 7 As regards the position of NE with respect to the SNS SAC and harbour porpoise, it appears that the concern does not relate to the conclusion of no AEoI alone and in-combination (no concern remains regarding that conclusion), but instead relates to strategic management of mitigation – which is outside the scope of the Application and not within the Applicant's control. The Applicant's position is that sufficient legal control is provided in the dDCO to enforce the relevant mitigation for Thanet Extension, such to satisfy the test of no AEoI alone and in-combination.
- 8 In relation to the concerns submitted by NE for both kittiwake (FFC SPA) and RTD (OTE SPA), it is noted that NE has not provided any definitive evidence to either refute the Applicant's evidence or to support the NE position. The situation is regrettable, as the absence of such evidence make it difficult to understand NE's concerns, including why NE consider an in-combination AEoI cannot be ruled out or why Thanet Extension is regarded as unacceptable given the absence of any appreciable contribution to any in-combination effects. In the absence of any evidence against the Applicant's position, it is the position of the Applicant that sufficient evidence has been provided to support the position of no AEoI in its entirety.

2 Comments on the RIES

Table 1: Applicants comments on the RIES

Paragraph	Applicant's Comment
2.2.1	<p>The text refers to Table 7.3 from the updated RIAA issued at Deadline 2 (REP2-018 and REP2-019), finding that the effects listed were all screened in for LSE. Please note that the bullets listed include effects screened out from LSE, including (for marine mammals):</p> <ul style="list-style-type: none"> • Long term physical loss of habitat; • Collision risk; • Increases in suspended sediment with subsequent deposition; and • Change in prey availability & behaviour. • The ornithology bullet also includes effects that have been screened out from LSE, specifically: <ul style="list-style-type: none"> • Barrier effect; and • Changes in prey availability & behaviour.
3.2.6	<p>As a result of the amendments due to Sweetman II, additional sites/features also had accidental pollution screened in. These are:</p> <ul style="list-style-type: none"> • Southern North Sea cSAC (harbour porpoise); and • Bancs des Flandres (harbour porpoise).
Table 3.1	<p>Footnote 9 – the ExA is correct that NE agreed no LSE from accidental pollution for the 'submerged or partially submerged sea cave' feature of the Thanet Coast SAC. For the RIAA re-issued at Deadline 2, which was partly to enable the changing appreciation of the implications of Sweetman and how mitigation is applied in LSE terms to be incorporated, the feature was screened in for LSE for the avoidance of doubt.</p>
Table 3.1	<p>Footnote 11 – the ExA is correct that inclusion of LSE for physical processes for the wetland invertebrate assemblage is an error (which should have been removed following the dropping of landfall option 2).</p>
Table 3.1	<p>Footnotes 13 and 14 – reference to REP2-014 appears to be an error; the Applicant suggests that it should read REP2-004. It is noted that LSE is concluded for barrier effects for little tern and common tern in the screening matrix; the Applicant would highlight that Matrix 32 (Integrity) for the Outer Thames Estuary SPA does provide, in bullet (c) the reasoning for a lack of AEoI – namely 'extremely low number of the</p>

Paragraph	Applicant's Comment
	<p>tern interest features using the site and the minimal effect of deviating around the site on migration that makes no material difference to the long-term maintenance of the tern species population of the Outer Thames Estuary SPA'. It is acknowledged that this finding does not appear in the main body of the RIAA (REP2-018 and REP2-019), however this issue has been assessed and reported in the relevant matrix, with a conclusion of no AEoI. No comments have been received from IPs on this matter during Examination that would cast doubt on that conclusion.</p>
Table 3.1	<p>Footnote 15 – it is noted that LSE is concluded for barrier effects for gannet, kittiwake and breeding bird assemblage in the screening matrix; the Applicant would highlight that Matrix 36 (Integrity) for the FFC SPA does provide, in bullet (c) the reasoning for a lack of AEoI – namely 'the minimal effect of deviating around the site on migration that makes no material difference to the long-term maintenance of the gannet and kittiwake populations of the Flamborough & Filey Coast SPA'. It is acknowledged that this finding does not appear in the main body of the RIAA, however this issue has been assessed and reported in the relevant matrix, with a conclusion of no AEoI. No comments have been received from IPs on this matter during Examination that would cast doubt on that conclusion.</p>
Table 3.1	<p>Footnote 16 – it is noted that LSE is concluded for disturbance and displacement for guillemot and breeding bird assemblage in the screening matrix; the Applicant would highlight that Matrix 37 (Integrity) for the Northumberland Marine SPA does provide, in bullets (a) and (b) the reasoning for a lack of AEoI – namely 'a prediction of displacement resultant mortality to a small number of guillemot (the relevant component of the breeding assemblage) that makes no material difference to the long-term maintenance of the guillemot population of the Northumberland Marine SPA'. Please also see paragraph 8.5.13 of the RIAA (REP2-018 and REP2-019). Therefore the matter has been assessed and reported appropriately, with a conclusion of no AEoI. No comments have been received from IPs on this matter during Examination that would cast doubt on that conclusion.</p>
Table 3.1	<p>Footnote 17 – the Applicant notes the omission of roseate tern from the list of features and would agree with the ExA that the conclusions of no LSE for all other tern species, which is not disputed by IPs, would apply equally to roseate tern.</p>
Table 3.1	<p>Footnote 18 – it is noted that LSE is concluded for barrier effects for kittiwake and breeding bird assemblage in the screening matrix; the</p>

Paragraph	Applicant's Comment
	<p>Applicant would highlight that Matrix 39 (Integrity) for the St Abbs Head to Fast Castle SPA does provide, in bullet (c) the reasoning for a lack of AEoI – namely ‘minimal effect on kittiwake (as interest features alone and as part of the breeding assemblage) of deviating around the site on migration that makes no material difference to the long-term maintenance of the kittiwake population of the St Abb’s Head to Fast Castle SPA’. It is acknowledged that this finding does not appear in the main body of the RIAA but the issue has been assessed and no comments have been received from IPs on this matter during Examination that would cast doubt on that conclusion.</p>
<p>Table 3.1</p>	<p>Footnote 19 – it is noted that LSE is concluded for barrier effects for lesser black backed gull in the screening matrix (and LBBG as part of the Ramsar assemblage); the Applicant would highlight that Matrix 34 and 35 (Integrity) for the Alde-Ore Estuary SPA and Ramsar respectively do provide, in bullet (b) the reasoning for a lack of AEoI – namely ‘minimal effect of deviating around the site on migration that makes no material difference to the long-term maintenance of the lesser black-backed gull population of the Alde-Ore Estuary SPA/Ramsar’. It is acknowledged that this finding does not appear in the main body of the RIAA, however the matter has been assessed and reported in the relevant matrix, with a conclusion of no AEoI. No comments have been received from IPs on this matter during Examination that would cast doubt on that conclusion.</p>
<p>4.2.8</p>	<p>In response to NE’s comment that HDD ‘still represents the best landfall option’, the Applicant would reiterate that this remains subject to site investigation to ensure that the most suitable design is brought forward (site selection and alternatives chapter; Application ref 6.1.4, APP-040), which demonstrates the need for alternative cable installation methods in the design envelope. Certainty for the environmental outcome is provided through the SMRMP, on which NE are agreed.</p>
<p>4.2.11</p>	<p>The Applicant would refute the statements by KWT, and are satisfied that no AEoI will result to the Thanet Coast and Sandwich Bay SPA and Ramsar, as agreed with Natural England.</p>
<p>4.2.18-4.2.26</p>	<p>The Applicant would note that there is now full agreement with Natural England that there will be no adverse effect on integrity either for the project alone or in-combination with other projects.</p>
<p>4.2.21</p>	<p>The apparent discrepancy in the dredging proposals relates to dredging related to the ferry works, which is separate to the longer term and intermittent background maintenance dredge in the harbour. The</p>

Paragraph	Applicant's Comment
	former (if it still happens) would have no temporal overlap with works at Thanet Extension, the latter being intermittent, with no fixed timeframe and effectively forming part of the baseline receiving environment.
4.2.34	In the updated RIAA issued at Deadline 2 (REP2-018 and REP2-019), accidental pollution was screened in for the Southern North Sea SAC during construction, operation & maintenance and decommissioning.
4.2.36	In addition to the MMMP and Table 6.1 of the RIAA, further mitigation for harbour porpoise is provided in the Outline Site Integrity Plan, first provided at Deadline 2 (REP2-033) and a revised SIP at Deadline 4 (REP4-022). The suite of available mitigation measures included within the SIP ensure no AEoI will occur.
4.2.40	The Applicant would question if the focus of discussion on the Southern North Sea SAC has been in relation to a disagreement on the AEoI conclusions (specifically in relation to underwater noise). The Applicant considers the focus of the discussion to have been around how mitigation will be identified, provided and secured to provide the necessary certainty that no AEoI will result. In effect, the discussion has not been around the conclusion of no AEoI but about how the MMO will manage provision of the mitigation – as delivered in the MMMP and SIP and delivered through conditions in the draft DCO (see Appendix 43 to the Applicants Deadline 6 submission on 'Applicants Response to Natural England's responses to ISH8 Action Points and the Applicants Deadline 5 Submissions on HRA matters (offshore ornithology and marine mammals)').
4.2.56	The Applicant would add that a requirement to deliver on the MMMP and SIP are both provided for in the DCO, including a need for agreement with the MMO on these documents before works commence.
4.2.58	The ExA is correct in its understanding.
4.2.61	An updated SoCG will be submitted at Deadline 6.
4.2.63	An updated SoCG will be submitted at Deadline 6.
4.2.68	It is noted that no concerns were raised at Deadlines 1, 2, 3 and 4 by Natural England as regards gannet and the FFC SPA (e.g. RR-053, REP1-039, REP1-111, REP1-112, REP1-113, REP1-116, REP2-045, REP3-041, REP3-074, REP3-075, REP3-089, . All concerns in relation to the FFC SPA within these documents related to in-combination collision risk for kittiwake only. In REP4-033 NE note in paragraph 2.2.9 that 'We note

Paragraph	Applicant's Comment
	<p>that the Applicant seeks to agree common ground with Natural England in respect of gannet and kittiwake populations from Flamborough and Filey Coast SPA. Our position is set out in the latest Ornithological Statement of Common Ground between the Applicant and Natural England, which has been submitted at this deadline for your consideration.'. That SoCG was issued as REP4C-008, where it is agreed for gannet that 'The applicant and Natural England agree that assessments based on either parties methods and effects make no material difference to the overall conclusions'. With respect to the FFC SPA, no mention is made of gannet by NE.</p> <p>Of the Deadline 5 submissions by NE, neither REP5-064 or, REP5-065 make reference to gannet in relation to the FFC SPA. In REP5-066, where the ExA requests confirmation of agreement on gannet and the FFC SPA, NE stated N/A. It is not until the SoCG REP5-077, a late submission, that comment on gannet at FFC SPA in-combination is made by NE, specifically in relation to evidence from Norfolk Vanguard. It is understood that NE will be providing evidence at Deadline 6, after which the Applicant will expect to be able to respond.</p>
4.2.79	<p>The Applicant would add that under paragraph 7 of REP4-023 it states 'the position of the Applicant that the evidence available demonstrates that there is currently no AEoI on the OTE SPA. The most recent such assessment is for East Anglia Three, dated August 2017, with that conclusion reached in agreement with NE'.</p>
4.2.88	<p>We would note that although discussion as regards kittiwake has been ongoing, comment or concern from NE on gannet has been limited until Deadline 5 Specifically, in REP4-033, gannet is mentioned in relation to the FFC SPA in paragraph 2.2.8 confirming no AEoI alone, but no comment is made in-combination, instead referring to the Statement of Common Ground (REP4C-008) – NE do not make any comment as regards gannet in that version of the SoCG for the FFC SPA.</p> <p>It is not until REP5-077 that NE raise a question as regards gannet at the FFC SPA in-combination – with 4.2.89 of the RIES referencing the WR from NE (REP1-113) that for gannet 'no significant effect either alone or in-combination'.</p>
4.2.104	<p>Formal response to NEs comment will be provided in Appendix 43 at Deadline 6 (with that text provided below for ease of reference), however it can be confirmed that NE are correct and that the inclusion of Blyth was made in error.</p> <p>The comment is noted and the Applicant accepts that some confusion has occurred as regards the naming of different offshore wind farms. It</p>

Paragraph	Applicant's Comment
	<p>can be confirmed that the project currently being decommissioned is the Blyth offshore Wind Farm and not the Demonstrator/NaREC facility.</p> <p>As regards Blyth (NaREC Demonstrator), the Applicant would highlight that the consent (and therefore the assessed project) was for a maximum of 15 turbines, with a total capacity of 99.9MW with 5 WTG installed. Of the consented capacity, just 58.4MW remains in the consent (insufficient to install a further 7 of the existing capacity turbines). It is clear that Blyth NaREC, like many OWF, has not installed the full number of WTGs consented.</p> <p>It is confirmed that the Beatrice Demonstrator is scheduled to be decommissioned along the timescale referred to in REP4-029. That project currently contributes 0.23 kittiwake to the in-combination annual kittiwake collision risk totals. That total should be viewed in the context of the 40 kittiwake identified in The Crown Estate's Headroom report (as referenced in REP4-029), the further headroom anticipated when nocturnal flight heights are taken into consideration (as referenced by NE in their response to the ISH8 Action Points (REP5-064)) and the recent Non-Material Change (NMC) for Creyke Beck (referenced in response to 4.2.105 below).</p>
4.2.105	<p>The Applicant would add that NE do allow for consideration of East Anglia ONE when comparing 'as-built' scenarios and taking account of headroom (REP5-066). The Applicant would draw the ExAs attention to the recent Creyke Beck NMC, including the NE response letter which stated with respect to gannet and kittiwake collision risk 'We advise that any future projects entering the consenting process should take into account the revised Dogger Bank Creyke Beck project envelope in their in-combination assessment, should this non-material change to the DCO be accepted.'¹ The comment is in the context of predicted reductions in kittiwake collision risk made by the Applicant in Table 4 of their NMC Environmental Report². Further evidence is provided in Appendix 43 to Deadline 6, with that information provided here for ease of reference.</p> <p>The recent (and successful) NMC application for Dogger Bank Creyke Beck provided a revised set of CRM figures with respect to kittiwake mortality and any apportionment of that risk to the FFC SPA. The revised CRM within this report presented a reduction in the mortality rates associated with Dogger Bank Creyke Beck to kittiwake from the</p>

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010021/EN010021-002309-Natural%20England%20comments%20on%20nmc%20DCO.pdf>

² <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010021/EN010021-002271-DBCB%20NMC%20Application%20Environmental%20Report.pdf>

Paragraph	Applicant's Comment
	<p>FFC SPA from 109 individuals (within the consented project's HRA assessment) to 40.2 individuals (within the revised project's update to the HRA assessment). This provides additional headroom for other projects of up to 68.8 kittiwakes from the FFC SPA. The Applicant acknowledges that despite Natural England and the RSPB not agreeing on all the parameters used within the CRM for this revised set of assessments, including the use of Band Option 3, they did accept that there would be no adverse effect from the project alone under all scenarios and at all avoidance rates and also in combination with other plans and projects under all scenarios.</p> <p>Therefore, while the Applicant acknowledges that the HRA should be assessed based on consented design envelope (and not 'as built'), and that Thanet Extension has been assessed based on consented design, the precaution built in through the process is relevant, especially given the very small numbers attributed to Thanet Extension in the context of the existing headroom and in light of recent agreed changes to both Triton Knoll and for the Dogger Bank Creyke Beck project that provide headroom in excess of the very small contribution that Thanet Extension makes to the overall in-combination total.</p>
4.2.106	The Applicant understands that NE are now in agreement with the Applicant, on no AEoI for gannet alone and in-combination at the FFC SPA.
Table 4.1	It is noted that under the Southern North Sea SAC, agreement with NE that no AEoI applies alone is inferred. The Applicant would submit that there is agreement with NE on no AEoI alone for the SNS SAC, with the SoCG registering where disagreement exists only.
Page A3-2	In the key to matrices, the Applicant considers that the text should refer to AEoI and not LSE.
Page A3-6	At the end of point d, the Applicant would add 'see also footnote i'
Page A3-7	With respect to the different dredging options at Ramsgate, please see the comment on paragraph 4.2.21 above.
Page A3-7	The Applicant would highlight that matters regarding the MCZ are not pertinent to the HRA process.
Page A3-15	In bullet point b, and as noted in response to Table 3.1 footnote 11 above, the ExA is correct that the inclusion is erroneous and should have been removed for the RIAA as re-issued at Deadline 2 (the issue related to landfall option 2, which has been removed).

Paragraph	Applicant's Comment
Page A3-22 and Page A3-25	In paragraph 7 of bullet point b and paragraph 17 of bullet point c, the Applicant would highlight that previous submissions have highlighted the existing powers of the MMO and the condition within the dDCO, which combined mean there is no requirement for further complicating and lengthening the dDCO by stating such existing powers explicitly.
Page A3-24 and Page A3-25	In paragraphs 11 and 15 of bullet c, the Applicant would add that existing provision is made in the dDCO to ensure delivery of the SIP and that it will require sign of by the MMO. Most recently, that is provided in Appendix 43 to the Applicants Deadline 6 submission.
Page A3-27 and Page A3-30	In paragraph 3 to bullet point a and paragraph 4 to bullet point e, the Applicant would emphasise the importance of site specific data, collected at Thanet OWF, that provides for a site specific evidence base for displacement risk at Thanet Extension. That evidence is provided most recently in the Applicant's Appendix 43 to Deadline 6 submission.
Page A3-30	In paragraph 7 to bullet point e, the Applicant would emphasise that all OWFs consented to date (where the OTE SPA and RTD has been a feature of interest) have been granted consent on the basis of no AEoI, including the most recent example (East Anglia Three) in 2017 (see Appendix 43 to the Applicants Deadline 6 submission).
Page A3-37	With regards NE's comment on Blyth, please see the comments in relation to paragraphs 4.2.104 and 4.2.105 above.
Page A3-38	In paragraph 13 to bullet point f, the Applicant would add reference to the recent granting of a NMC for Dogger Bank Creyke Beck, which provides further evidence for headroom capacity (see Appendix 43 to the Applicants Deadline 6 submission).
Page A3-38	In bullet point g, the Applicant would question where in REP1-113 NE expressed concern about gannet and the FFC SPA. The only species for which NE expressed concern at the FFC SPA in that document is kittiwake. NE did not raise concerns about gannet in connection to the FFC SPA until Deadline 5 (see comments on 4.2.68 and 4.2.88 above).

3 Conclusions

- 9 Overall, it can be concluded as follows:
- The Applicant has concluded no AEoI alone and in-combination in all cases;
 - Natural England agrees with the Applicant for the project alone in all cases;
 - The disagreements with Natural England relate to in-combination issues for the following sites and features:
 - Southern North Sea SAC (harbour porpoise, underwater noise during construction in-combination only);
 - Outer Thame Estuary SPA (red throated diver, displacement effects during operation & maintenance in-combination only); and
 - Flamborough Head and Filey Coast SPA (kittiwake, collision risk during operation & maintenance in-combination only).
- 10 It is noted that the concern raised by NE in relation to gannet at the FFC SPA and noted in the RIES as an area of disagreement was initially agreed with Natural England but has since been disagreed as a result of uncertainty over the Hornsea 3 project assessment, and therefore uncertainty with regard the in-combination effects.
- 11 Beyond the question of gannet (as addressed above), the RIES has identified the same areas of disagreement within Annex 2 Stage 2 Matrices, with these issues marked as '?' in place of the 'X' denoted elsewhere – the 'X' symbol correlated to the agreed position (between the Applicant and NE) of no AEoI.
- 12 It is the Applicants position that sufficient evidence has been provided to support the case that no AEoI exists alone and in-combination, whereas no substantive evidence has been provided to refute that case.