

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Annex B to Appendix 2 to Deadline 8 Submission:
Final Position Statement: draft Development
Consent Order

Relevant Examination Deadline: 8

Submitted by Vattenfall Wind Power Ltd

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Revision A

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Thanet Extension Offshore Wind Farm

Final Position Statement: draft Development Consent Order

The Applicant is pleased to confirm a high level of agreement with interested parties on a wide variety of topics in the draft DCO, which has developed throughout the Examination process. This is reflected in the final explanatory memorandum and the log of changes to the draft DCO. There remain a limited number of topics where discussions remain unresolved at the end of the Examination process, and the Applicant has accordingly summarised a final position on each of these topics. Arbitration has been considered separately in a position statement submitted at Deadline 8.

1. Offshore design parameters

- 1.1 The MMO has requested during the Examination process that additional maximum parameters as assessed within the Environmental Statement be added on the face of the draft DCO. These include: maximum permitted cable protection footprint, maximum permitted scour protection footprint, maximum number of cable crossings, and hammer energy.
- 1.2 The Applicant has included the Environmental Statement as a certified document in Schedule 13 of the draft DCO. Certified documents must be complied with, as required by Article 35(4). It is the Applicant's view that this adequately secures the design parameters.
- 1.3 In particular, as the Applicant has made clear in their Deadline 6 submission (REP6-066), there is an established precedent for hammer energy not being included on the face of the DCO, and the Applicant maintains that it is not necessary to do so. In the event that a change in hammer energy is requested by a developer post consent, this change in installation methodology is usually addressed within the Construction Method Statement when it is submitted as required in the dML(s). Where a change in construction methodology is requested the developer submits an accompanying note outlining how the change in methodology is still in accordance with the methods assessed in the ES (as required in the dMLs).
- 1.4 For clarity and ease of reference, the Applicant has provided a summary document as an annex to the explanatory memorandum which contains all of the project parameters.

2. Seasonal restrictions

- 2.1 The Applicant has proposed a seasonal restriction in respect on nonbreeding water birds between the 1st October and the 31st March for Work Nos. 3A and 3B and has secured this within the draft DCO (Requirement 26) and the export cable dML (Schedule 12, Condition 18). This has been welcomed by Natural England.
- 2.2 Natural England have further requested that further mitigation included in the outline landscape and ecological mitigation plan (OLEMP) also be included on the face of the draft DCO. The Applicant maintains that this mitigation is secured by Requirement 25, which requires the implementation of a landscape and ecological mitigation plan, which must accord with the OLEMP. This requirement allows for the level of discussions likely to be required to agree on the nuanced nature of the proposed mitigation.
- 2.3 In addition, in respect of the Southern North Sea SAC, a seasonal restriction is one potential measure of mitigation proposed within the Site Integrity Plan. Natural England have requested that this be secured on the face of the DCO. However, it would not be appropriate to require a seasonal restriction to take place if one is not required. If a seasonal restriction is necessary, it will be undertaken. The SIP commits to this and such a SIP is provided for and secured by way of condition. It is not appropriate or robust drafting to list in the body of the development consent order the contents of the SIP and its commitments, in the same way it would not be appropriate to do so for all of the various other plans securing forms of mitigation throughout the development consent order and provided for in the Schedule of Mitigation.

3. Timescales for approval of pre-construction plans and documentation

- 3.1 The Applicant has included a four month time scale for approval of pre-constructions plans and documentation in both dMLs, as is standard practice.
- 3.2 The MMO have requested an additional two months be added, to constitute a six month time scale. This fifty percent increase in the length of the timescale would constitute a substantial burden for the Applicant. In addition, a four month timeframe has been accepted on significantly larger projects including East Anglia THREE and as such, it is the Applicant's view that it is not necessary for this Project to be required to deviate from the established procedure.
- 3.3 There is a strong public interest argument in favour of approvals in a timely manner and ensuring that nationally significant infrastructure projects are not unduly delayed. The Project is not unduly complex, or time consuming, in comparison to previous and very recently consented Development Consent Orders (such as the Port of Tilbury (Expansion) Order 2019, which contained an approval period of six weeks (Schedule 9, Part 2 (14)(2)).

4. Pre-commencement wording

- 4.1 The Applicant has sought to allow for specific works to be undertaken prior to commencement, and has defined "commence" and "pre-commencement works" accordingly in the draft DCO. As explained in the explanatory memorandum, pre-commencement works necessary for the purposes of efficiently implementing the Project include archaeological investigations (Requirement 24), remedial work in respect of contamination (Requirement 21), and the erection of any fencing or temporary means of enclosure (Requirement 19). It is therefore necessary for the draft DCO to ensure that these works can be undertaken but are still necessarily controlled, and approved, by the relevant planning authority.
- 4.2 To ensure that all details of mitigation required for any substantial operations permitted prior to formal commencement be submitted to and approved by the relevant discharging authority before any pre-commencement works are begun, the Applicant has included Requirement 33, which states that:

(1) No pre-commencement works may be carried out until all details relevant to the pre-commencement works required by Requirements 14, 17, 18, 19, 21, 22, 23, 24 and 25 in Schedule 1 Part 3 of this Order have been submitted to and approved by the relevant authority as required by that requirement.

(2) In addition to sub-section (1);

(a) the undertaker may submit; and

(b) the relevant discharging authority may request

any additional information deemed necessary to ensure adequate mitigation is secured in relation to the pre-commencement works.

(3) The details required pursuant to sub-sections sub-paragraphs (1) and (2) may be submitted separately and in advance of the details required to discharge the requirement in advance of commencement.

- 4.3 The above requirement is mirrored through conditions into the deemed marine licences at Schedule 11 and Schedule 12 (Condition 24 and Condition 27 respectively). Therefore, it is the Applicant's view that all mitigation required for the pre-commencement works is adequately secured within the draft DCO.

5. Structures exclusion zone

- 5.1 The Applicant has introduced a structures exclusion zone (SEZ) to the Project, to limit interference with navigation. No part of Work No. 1(a) to (c), Work No. 2, nor Ancillary Works (a), (c) and (d) may be constructed within the SEZ, and this includes the over sail of any part of a

wind turbine generator. This is secured within the draft DCO and dMLs, and has been welcomed by interested parties, including the PLA and Estuary Services Limited (ESL).

- 5.2 Cable installation will be permitted within the SEZ. This accepted by the PLA and ESL, but both parties have outstanding concerns over the certainty of when and where cables would be installed.
- 5.3 The Applicant's position is that cable installation should not be considered an interference with navigation, as there is an established precedent of permitting cable installation within constrained waters.
- 5.4 Furthermore, the Applicant cannot extend the duration of cable installation beyond the defined period within the ES, as this is a certified document.
- 5.5 The Applicant notes that the MMO is the relevant regulator within the proposed project boundary, and the MCA the relevant statutory authority. The dMLs contain conditions requiring a suite of mitigation to ensure certainty about activities including within the SEZ. This includes a requirement to issue notices to mariners, and to submit layout and design plans to be agreed with the MMO and MCA. To provide absolutely clarity, the Applicant is content to amend Condition 13(1)(b)(v) in Schedule 11 to state:

(v) details of the works to be undertaken within the structures exclusion zone, including the location of cables".

- 5.6 The Applicant is also required by Schedule 11, Condition 13 (1)(b) to submit to the MMO a construction programme and monitoring plan which must include:

(v) details of the works to be undertaken within the structures exclusion zone; and

(vi) the proposed timetable for undertaking of such works within the structures exclusion zone.

6. Proposed navigation safety and shipping impact mitigation plan

- 6.1 The Port of Tilbury London Ltd. and London Gateway Port Ltd. (the Ports) have suggested that a new requirement be inserted within the draft DCO requiring the Applicant to provide a construction programme and monitoring plan details the works to be undertaken within the SEZ. In the view of the Ports, this plan should be approved by the Marine Coastal Agency (MCA), rather than the MMO, and should be a separate requirement. The MCA concurred that they would expect such a plan to be approved by the MMO in consultation with them.
- 6.2 The Applicant maintains that no additional requirement is necessary. As previously mentioned at Section 5.6 above, the dMLs have been amended to require specific details about the SEZ to be included within the construction programme and monitoring plan.
- 6.3 This plan must be approved by the MMO, who as a matter of course will consult all relevant bodies as they see appropriate, which would include the MCA in this instance. The MMO will consult with a number of statutory bodies when approving the construction programme and monitoring plan. This will include Trinity House, the MCA and other relevant bodies it sees fit, before approving such a plan. The MCA is not the appropriate body to approve a construction programme and monitoring plan. Its functions do not simply relate to shipping or indeed to safety. The MMO enforces the entirety of the deemed marine licence and ensures that all relevant plans are properly complied with. The Applicant notes that the MMO has not provided submissions in support of either the Ports or the MCA.

7. Public rights of navigation

- 7.1 Article 16 makes clear that public rights of navigation are suspended where permanent structures are located. This article has no effect on the waters surrounding the permanent structures and

only affects the specific area where it would not be psychically possible for one to navigate due to the presence of a permanent structure.

- 7.2 Similar articles have been included in many made DCOs including the Walney Extension Offshore Wind Farm Order 2014, the Burbo Bank Extension Offshore Wind Farm Order 2014, the Rampion Offshore Wind Farm Order 2014 and the Galloper Wind Farm Order 2013.
- 7.3 Following ongoing dialogue with interested parties including the PLA and Trinity House, the Applicant amended the article to refer to the suspension, rather than extinguishment, of rights. To be clear, no general power of extinguishment ever existed in the dDCO. This was a specific power to extinguish rights of navigation (now suspend) in specific turbine locations, which will be submitted to Trinity House.

8. Temporary Structures

- 8.1 At Deadline 6, the ExA requested that the Applicant provide proposed relevant changes or an explanation as to why a change in drafting was not warranted in relation to navigation safety measures for temporary construction works. The Applicant is not proposing any temporary structures at sea during the commencement of construction, apart from buoys, which will only be present for a limited period of time. Temporary works relate to construction vessels, such as jack-up barges, which move on a daily basis. Construction movements and ensuring safety at sea is controlled by the Aids to Navigation condition 8 in Schedules 11 and 12 of the draft DCO.

9. "Relevant Statutory Nature Conservation Body"

- 9.1 Natural England have requested that all references to Natural England should be amended to state the "Relevant Statutory Nature conservation Body". This matter was discussed with the Examining Authority at the development consent order Examination hearing 9. The Examining Authority requested that the DCO was amended to specifically refer to Natural England for clarity as the only body that could be referred to as the "Relevant Statutory Nature Conservation Body" is Natural England. The DCO would operate as a matter of law to apply to any successor body to Natural England.