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To: Vattenfall Wind Power Limited
and All Interested and Other Parties

Your Ref:
Our Ref:

Cc

Date: 21 November 2019

Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010

Application by Vattenfall Wind Power Limited for an order granting development consent for the proposed Thanet Extension Offshore Wind Farm off the coast of Thanet, Kent

REQUEST FOR INFORMATION AND COMMENTS ON THE APPLICATION - EN010084

Dear Sir or Madam,

Following the completion of the examination of the application for the Thanet Extension Offshore Wind Farm (“the Development”) on 11 June 2019, the Examining Authority (“the ExA”) submitted a Report and Recommendation in respect of its findings and conclusions to the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) on 11 September 2019. In accordance with section 107 of the Planning Act 2008, the Secretary of State has three months to determine the application.

There are several issues on which the Secretary of State would be grateful if parties identified in bold could provide an update or further information. Additional comments from any interested parties on these points will also be considered. The issues are grouped by topic heading.

Marine Navigation, Shipping and Ports Infrastructure

Navigational Risk Assessment

1. The Secretary of State notes that a number of Interested Parties and Other Persons raised concerns on the impacts from the development on shipping, navigation and ports infrastructure, and that these concerns were sustained at the end of the examination.
2. The Secretary of State is aware that the Applicant submitted a further collision risk assessment undertaken by an independent consultant (Anatec) at Deadline 6, but that as this was submitted late in the examination the ExA was unable to subject it to oral examination or fully seek the

views of interested and other parties. The Secretary of State therefore invites views from **Trinity House, Maritime and Coastguard Agency, UK Chamber of Shipping, London Pilots Council, Port of Tilbury, London Gateway Port, Port of Sheerness, London Medway Ports, Port of London Authority and Estuary Services Limited**, and any other **Interested** or **Other Parties** on the further collision risk assessment which is available at:

https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010084/EN010084-001987-Vattenfall%20Wind%20Power%20Limited%20-%20D6_Appendix42_TEOW_CRM_RevA.pdf

In particular, the Secretary of State would be grateful for views as to whether the assessment addresses the concerns raised during the examination on navigation risks – in particular collision risks assessed after the introduction of the Structure Exclusion Zones and views on Anatec’s interpretation in its assessment of incidents reported to the Marine Accident Investigation Branch.

Further Navigation Simulation Report

3. Following the close of the examination, the Applicant submitted a further Pilot Transfer Bridge simulation report titled ‘Thanet Extension Offshore Wind Farm: HR Wallingford Bridge Simulation Report’ (“the Report”) to consider whether there is sufficient sea room in the vicinity of the proposed Development to enable marine navigation and pilotage to continue safely. The Report is available at:

<http://infrastructure.planninginspectorate.gov.uk/document/EN010084-003072>

The Secretary of State invites comments from the **parties listed above** and any other **Interested** or **Other Party** on the Report and in particular for comments on Annex I which contains the Applicant’s summary of the responses to its consultation on the Report, and the Applicant’s responses to those responses. In order to consider this matter fully the Secretary of State invites comments from the Parties listed above on whether or not the findings in this Report addresses the concerns raised during the examination, and for any other views on the Report.

Agreement for Lease

4. The Secretary of State is aware that at the end of examination an Agreement for Lease to secure the property rights required to allow the Applicant to construct the offshore elements of the development had not been agreed between the Applicant and The Crown Estate. The Secretary of State requests the **Applicant** and **The Crown Estate** to confirm if an Agreement for Lease has now been agreed and, if so, for confirmation of the maximum installed generating capacity allowed by the lease. If an Agreement for Lease has not been agreed, the Secretary of State requests an indication of whether an agreement is possible and, if so, when it might be reached.

Draft Development Consent Order

5. The Secretary of State is aware that the Applicant submitted changes to the draft development consent order late in the examination and, as a result, Interested and Other Parties were not

afforded a full opportunity to submit their views on the Applicant's changes. The Secretary of State therefore invites comments from any **Interested** or **Other Party** on the draft development consent order which incorporates these changes which is available at:

https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010084/EN010084-002100-D8_Appendix7_TEOW_DCO_Rev1.pdf

Compulsory Acquisition

National Trust

6. The Secretary of State is aware that during the examination, the National Trust and the Applicant were negotiating an option agreement for the land held by the National Trust that the Applicant is seeking to compulsorily acquire. However, the Secretary of State notes that agreement had not been reached by the end of the examination and the National Trust's objection to the compulsory acquisition powers sought by the Applicant in respect of its land had therefore not been withdrawn. The Secretary of State requests an update from the **Applicant** and the **National Trust** on the status of negotiations and for confirmation as to whether agreement has been reached. If agreement has not been reached, the Secretary of State requests the **Applicant** and the **National Trust** to indicate whether an agreement is possible, and if so when it might be reached.

National Grid

7. The Secretary of State notes that at the beginning of the examination, National Grid Plc ("National Grid") submitted a representation on behalf of both National Grid Gas Plc ("NGG") and National Grid Electricity Transmission Plc ("NGET") on the possible impact of the development on NGG and NGET's apparatus and land interests. The Secretary of State is aware that all subsequent representations made by National Grid during the examination related solely to the interests of NGET, and that its representation of 23 May 2019 withdrawing its representations did not make any reference to NGG. The Secretary of State requests confirmation from **National Grid** and **NGG** as to whether National Grid's representation of 23 May 2019 withdrawing its representations also applies to the representations made on the interests of NGG.

RAMAC Holdings (Trading) Limited

8. The Secretary of State notes that the draft development consent order authorises the compulsory acquisition of land in the ownership of Ramac Holdings (Trading) Limited ("Ramac"). The Secretary of State is aware that the Applicant and Ramac were in the process of negotiating an option agreement which was not finalised by the end of the examination, and that Ramac's objection to the development consent order had therefore not been withdrawn. Following the examination, the Applicant submitted a letter from the Secretary of State for Housing, Communities and Local Government confirming section 135 consent to the inclusion of the provisions to allow the compulsory acquisition of the Crown land in question. The Secretary of State requests **Ramac** to confirm whether it has reached a commercial agreement with the Applicant on the powers sought by the Applicant in relation to Ramac's land and, if so, whether it will withdraw its objections. If Ramac's objections are sustained, the Secretary of State requests the **Applicant** to provide further details to demonstrate that the proposed substation site is the best location for the substation, and for additional evidence to demonstrate why the alternative

Baypoint Club and BCA Fleet Solutions land can and should be excluded so that the Secretary of State can consider afresh whether the requirements of the Planning Act 2008 can be met and compulsory acquisition powers included within the development consent order.

Transfer of Benefits and Compulsory Acquisition Compensation

9. The Secretary of State is aware that during the examination, the Applicant made changes to the proposed development consent order to ensure that if the transmission assets are constructed by a body other than the Applicant, any such body that would benefit from the development order against whom claims arising from the exercise of compulsory purchase powers would be required to provide a guarantee to cover the cost of such claims. The Secretary of State notes that the Examining Authority did not have the opportunity to examine this matter fully by the close of the examination. To ensure that the Applicant, or any body other than the Applicant that would benefit from the development consent order, may not exercise any of the powers in Parts 3, 4, 5 and 6 of the development consent order in relation to any land unless it has first put in place a financial guarantee or an alternative form of security, the Secretary of State is considering the inclusion of the following paragraph in Article 5:

(4) If the undertaker transfers any or all of the benefit of the provisions of this Order pursuant to paragraph (1) the transferee must not begin to exercise the powers provided within Parts 3, 4, 5 and 6 of this Order in relation to any land unless it has first put in place a funding arrangement to the satisfaction of the Secretary of State under Article 42.

The Secretary of State is also considering relocating the provisions of Article 5(4) (a) and (b), Article 5(6) and Article 7 to the following new Article:

—(1) The undertaker must not exercise the powers conferred by Parts 3, 4, 5 and 6 of this Order in relation to any land unless it has first put in place either — (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power of compulsory acquisition or temporary possession in relation to that land; or

(b) an alternative form of security for that purpose which has been approved by the Secretary of State.

(2) Such guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such form as to be capable of enforcement by such a person.

(3) Such guarantee or alternative form of security will have a maximum liability cap of £8,500,000 in the year that the Order is made, increasing on 1 April each following year by the applicable compound annual growth rate for UK land excluding land held by households published by the Office for National Statistics.

(4) Such guarantee or alternative form of security is to be in place until no later than the date on which, if a referral is made to the Tribunal, it could be defended by the undertaker or transferee on the ground that the relevant period for such any claims has expired and the Limitation Act 1980 applies so as to time-bar such claims or such later date as when all such claims validly made have either been settled or determined by the Tribunal.

The Secretary of State invites comments from the **Applicant** and any **Interested or Other Party** on the above changes. The Secretary of State, in particular, notes the information already provided by the Applicant during the examination to justify a cap of £8.5 million to meet any costs that may arise from the exercise of compulsory acquisition powers. However, in order to consider this matter fully, the Secretary of State requests the **Applicant** to provide further details as to why this cap is necessary. The Secretary of State would also be interested in comments from **any landowners affected by compulsory acquisition** on this point .

Fish Spawning

10. The Secretary of State is aware of the concerns raised by the Marine Management Organisation (“MMO”) regarding the impact of construction noise on herring and sole spawning grounds and that an agreement between the Applicant and the MMO had not been reached by the end of the examination. To address these outstanding issues, the Secretary of State is considering the inclusion of the following new condition in the development consent order and deemed marine licence:

(1) Subject to paragraph 2 no percussive pile driving works shall be carried out by or on behalf of the undertaker as part of or in relation to the construction of the authorised scheme between the following dates in any year—

(a) 1st November and 31st January (inclusive) (the ‘Downs herring stock restriction’);

(b) 1st February and 30th April (inclusive) (the ‘Thames herring stock restriction’);
and

(c) 1st March and 30th April (inclusive) (the ‘Dover sole stock restriction’).

(2) The MMO may approve a variation to the dates or the locations of the seasonal restrictions under paragraph (1) provided such approval does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement.

Definitions:

“Dover sole stock restriction” means a seasonal restriction on works to enable spawning by the Dover sole fish stock;

“Downs herring stock restriction” means a seasonal restriction on works to enable spawning by the Downs herring fish stock;

“Thames herring stock restriction” means a seasonal restriction on works to enable spawning by the Thames herring fish stock;

The Secretary of State requests comments from the **Applicant**, the **MMO** and any **Interested or Other Party** on the inclusion of this condition. The Secretary of State also requests comments on the wording of the condition and the definitions.

Saltmarsh Mitigation

11. In order to secure the Saltmarsh Mitigation, Reinstatement and Monitoring Plan in the terrestrial environment, the Secretary of State is considering the inclusion, in requirement 13, of the text underlined and in italics below:

Requirement 13

13.— (1) The undertaker must undertake appropriate surveys at the locations for Works No. 3A and 3B in order to monitor the impact of development authorised by the Order within any areas of saltmarsh, as provided for within the saltmarsh mitigation, reinstatement and monitoring plan.

(2) No part of Work Nos. 3A or 3B may commence until a saltmarsh mitigation, reinstatement and monitoring plan, which must accord with the document certified as the saltmarsh mitigation, reinstatement and monitoring plan and be updated to take account of the final export cable route and chosen installation methodology has been approved pursuant to requirement 10.

(3) In the event that surveys carried out in accordance with paragraph (1) or Schedule 11 condition 27(2)(e) find that ringed plover are present, the saltmarsh mitigation, reinstatement and monitoring plan must include measures the intention of which is to prevent disturbance to ringed plover, following current best practice as advised by Natural England.

The Secretary of State requests comments from the **Applicant, Natural England** and any **Interested or Other Party** on the inclusion of this text.

12. **The deadline for a response is midnight 13 December 2019.**
13. The response should be submitted by email to ThanetExtension@planninginspectorate.gov.uk. Please send any hard copy response to Thanet Extension Project Team, Secretary of State for Business, Energy and Industrial Strategy, c/o the Planning Inspectorate, Kite Wing 3/K, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Project Team. An explanation of the reasons for this should also be provided.
14. Your response will be published as soon as possible after 13 December 2019 on the Thanet Extension Offshore Wind Farm project page of the Planning Portal website:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/thanet-extension-offshore-wind-farm/>
15. Comments will then be invited from Interested and Other parties on the above matters. The Secretary of State will then consider the responses and information received in reaching a decision on the Application.
16. **In order to allow time for the steps above to be taken, the Secretary of State will be setting a new deadline for a decision. A statement confirming the new deadline for a decision will be**

made to the House of Commons and House of Lords in accordance with section 107(7) of the Planning Act 2008 as soon as possible once Parliament is in session.

17. This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the Thanet Extension Offshore Wind Farm project, and nothing in this letter is to be taken to imply what that decision might be or what final conclusions the Secretary of State may reach on any particular issue which is relevant to the determination of the application.

Yours faithfully

Gareth Leigh

Gareth Leigh

Head, Energy Infrastructure Planning