Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 2 to Deadline 8: Applicant's final position on matters outstanding

Relevant Examination Deadline: 8

Submitted by Vattenfall Wind Power Ltd

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Revision A

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1 Introduction

1.1 Overview

1 This document summarises the outstanding matters from the Thanet Extension examination, sets out the submissions made from the Applicant and relevant Interested Parties (IPs) in respect of those matters, and summarises the Applicant's final position.

1.2 Structure of Document

2 This document initially describes the Applicant's summary of matters agreed, and those that are either not agreed or remain under some form of discussion. The following section describes the 'Main Features of the Proposal and Site' with a summary of the proposal as submitted at the point the application was made, and the proposal as submitted at the close of the Examination phase. The subsequent sections of the document then present the Applicant's summary interpretation of those matters not agreed and concluding remarks.

1.3 Matters concluded

3 Annex A to this document provides a full audit of the Environmental Statement topics and plans submitted the Applicant and demonstrates that agreement has been reached on the majority of topics.

4 Through the SoCG process the Applicant has agreed a final position on the majority of ES topics and other matters. The Examining Authority can be confident in the conclusions of the ES and the security of relevant mitigation for the following topics:

- Physical Processes (Ref)
- Marine Water and Sediment Quality
- Benthic ecology – including certainty over assessment and the withdrawal of requests for monitoring
- MCZ – subject to a final MCZ assessment audit note
- Fish and Shellfish Ecology – with the exception of effects on herring
- Offshore ornithology (EIA)
- Marine mammals (EIA)
- Archaeology (offshore and onshore)

- Onshore Ecology
- Landscape and Seascape visual impact assessment(s)
- Ecological monitoring (off and onshore)
- Design – construction methodologies
- Local authority agreement

1.4 Matters outstanding

5 The topics where the Applicant considers that conclusions of the ES have not been agreed, or where there are other outstanding matters, are as follows:

- DCO – Arbitration (please see the final position statement submitted separately at Deadline 8).
- DCO – several matters relating to drafting points – please see Annex B to this submission
- Site Selection and Alternatives
- Shipping and Navigation
- Comm Fisheries
- Herring/Sole
- Habitats Regulations Assessment – in-combination effects relating to …
- Crown/lease

6 The final position with respect to the dDCO is set out in the dDCO tracker (Annex A Appendix 8) and the Applicant's final position on the IPs responses to the dDCO is submitted as Appendix 6 to this submission. The Applicant has summarised remaining matters of disagreement, bar arbitration, in an Appendix to this position statement.

2 Main Features of The Proposal and Site

2.1 Application as made

7 The Application is for development consent to construct an offshore wind farm consisting of up to 34 WTG, each with a rated capacity of between 8 and 12+MW, providing a total installed generating capacity of up to 340MW.

2.2 Benefits of the project

8 The NPSs establish to the policy need for new renewable energy generation. The key drivers underpinning the need for renewable energy within the UK and thereby the need for Thanet Extension are:

- The need to reduce greenhouse gas emissions, including increasing energy generation from low carbon sources to replace high carbon energy sources such as burning coal and gas;
- The need for energy security, including:
  - The need to secure safe, affordable, reliable energy, preferably generated in the UK for the UK market;
  - The need to replace existing ageing energy generation infrastructure;
  - The need to meet expected electricity demand whilst meeting climate change commitments; and

9 Substantial weight should therefore be given to the contribution which projects would make towards satisfying that need (NPS EN-1 paragraph 3.1.4). In this policy context, Thanet Extension would make a substantial contribution towards the delivery of renewable energy in line with the need to significantly decarbonise the power section by 2030 and should therefore be ascribed substantial weight in the balance of considerations and the presumption in favour of such developments (NPS EN-1 paragraph 4.1.2).

2.3 Project envelope at application

Site described - Offshore

10 The Thanet Extension wind farm site is located in the southern North Sea in an area of sea off the coast of Kent. The proposed Extension surrounds an existing OWF, the Thanet OWF. At its closest, the WTG array site would be 8km from the Kent coast. It would cover an area of about 60km^2.

11 On submission of the application, the Applicant confirmed a single phase approach to construction which would span 24 months, of which 6 months would be the anticipated construction period for WTG and OSS and meteorological mast (should an OSS or meteorological mast be required) foundations.

Principal works described

12 The principal works as proposed are set out in the Applicant's draft Development Consent Order (dDCO) submitted with the application (Schedule 1, Part 1, Authorised Development). Work No.1 comprises the NSIP, with Work Nos. 2 – 16 comprising associated development.

13 The key components of Work No. 1 would comprise:

- Offshore WTG and their associated foundations;
- Sub-sea cables (inter-array, and those connecting WTG and offshore electrical stations);
- A meteorological mast and associated foundations for monitoring wind speeds during the operational phase.

14 The application included associated development (Work Nos 2 – 16). This comprises works which are required to receive and export the electricity produced by the offshore generating station, with suitable electrical transformation at both the offshore electrical stations and the onshore substation(s). The following elements are associated development as part of the Proposed Development:

- An offshore electrical stations;
- A sub-sea electrical connection between the offshore substation, if required and from that substation to a landfall at Pegwell Bay;
- Up to four transition bays (underground pits where the offshore export cables are jointed to the onshore connection works);
- An underground electrical connection comprising up to four circuits (each with up to three cables) pulled through ducting;
- One onshore substation housing the principal electrical equipment, located at the Richborough Port, adjacent to the existing National Grid Richborough Substation;
- An underground electrical connection comprising up to two circuits pulled through ducting or laid directly underground in the location of the proposed onshore substation(s) and the National Grid Substation at Richborough; and

- Landscaping works including bunding and planting.

Ancillary works

15 Ancillary works are also included within the Applicant's dDCO (Schedule 1, Part 2, Ancillary Works) and may consist of:

- Temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
- Buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- Temporary works for the benefit or protection of land or structures affected by the authorised development

2.4 Project envelope at the close of Examination

16 The Applicant notified the ExA at D1 that it would be removing Landfall Option 2, and thereby removing the need for permanent loss of saltmarsh at landfall. The Applicant confirmed the implications of this within documents REP1-014 and REP2-036.

17 The Applicant notified the ExA at D1 that it would be introducing a Cables Exclusion Zone, and thereby reducing interaction, and avoiding any permanent loss, with the features of the Thanet Coast MCZ and SAC. The Applicant confirmed the implications of this within its responses to relevant representations (REP1-017) and response to ExQ1 (REP1-024).

18 The Applicant notified the ExA at Deadline 4 that there would be a material change made introducing a Structures Exclusion Zone. The SEZ was introduced to mitigate potential effects on shipping and navigation receptor, with recognised additional (though not significant with regards EIA Regulations) benefits for HRA matters, commercial fishing interests, seascape/landscape receptors, and matters relating to historic setting. The Applicant confirmed the implications of this within documents:

- Structures Exclusion Zone Explanatory Report
- Review of the Environment Statement and Report to Inform Appropriate Assessment in relation to the Structure Exclusion Zone
- Revised Offshore Works Plan
- Addendum to Navigation Risk Assessment (and associated annexes)
- An addendum to the Environmental Statement (ES) assessing the SEZ proposal
- Review of Application Documents with regards to the Structures Exclusion Zone

- The consequences of the SEZ on assessment of the Outer Thames Estuary and Flamborough and Filey Coast SPAs
- Implications of the SEZ – Seascape, Landscape and Visual Effects
- Implications of the SEZ – Seascape, Landscape and Visual Effects – Wirelines
- Structure Exclusion Zone, Onshore Heritage
- Assessment of the implications of the implementation of the Structures Exclusion Zone in relation to commercial fisheries.
- Shipping and Navigation Statement of Evidence and Accompanying Figures

19 The Applicant undertook a consultation exercise, reporting the findings of the exercise in REP6-044. The dDCO provides a full description of the works proposed to be permitted within the SEZ, and those that are not.

3 Site Selection and Assessment

3.1 Background

20 Site Selection and Alternatives was raised as a matter of concern during the early stages of the Examination with Natural England in particular noting concern that one of the Landfall options (Option 2) resulted in permanent loss of saltmarsh which could potentially be avoided via other landfall options.

3.2 Policy

21 Section 4.4 of NPS EN-1 addresses the policy requirements to consider alternatives in relation to the ES and the Habitats Regulations.

22 The Habitats Regulations require the competent authority (in this case the SoS as decision-maker) before authorising a project likely to have a significant effect on a European site "to make an appropriate assessment of the implications for that site in view of the site's conservation objectives." Anyone applying for development consent for a NSIP must provide the competent authority with such information as may reasonably be required "for the purposes of the assessment" or to enable them to determine whether an appropriate assessment is required. This information normally takes the form of a HRA report.

23 Paragraph 4.4.3 of NPS EN-1 also specifies other guiding principles that the SoS should consider when deciding what weight should be given to alternatives, and in particular:

"…the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner;"

"…the (decision-maker) should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development."

24 The Applicant set out in ES Chapter 4 'Site Selection and Alternatives' [APP-040] its approach to the consideration of alternatives for the Proposed Development. In respect of the WTG array site and offshore cable corridor, the selection process was an iterative one. This involved consultation to refine broad areas of search having regard to technical constraints and environmental impacts, following initial zone selection.

3.3 Areas of agreement

25 All matters with regards HRA and onshore biodiversity were resolved with Natural England as recorded in the SoCG (PINS Ref REP6-019 (saltmarsh matters)).

3.4 Areas of disagreement

26 Site Selection remains an issue of disagreement with the KWT and NT, though it is of note that the matter is no longer disagreed with the Statutory Nature Conservation Body, Natural England.

27 The reason for the ongoing disagreement is due to the selection of the Pegwell Bay landfall and the relative merits of this location against another option considered during site selection, to the south. The IPs consider that a full environmental assessment should have been conducted on both options. The Applicant maintains that this is not in line with guidance or policy and that the alternatives have been assessed at an appropriate level of detail. The Environment Statement concludes that there will be no significant effects as a result of the development and this conclusion is agreed with Natural England.

Onshore substation

28 With regards to the onshore substation site selection, the location is not agreed with the landowner, Ramac Holdings Ltd, although this has been agreed with Dover District Council (DDC) as the relevant planning authority for this site. The ES concludes that no significant effects would arise as a result of the construction, operation or decommissioning of the onshore substation and this is agreed with DDC and Kent County Council (in respect of highways impacts).

29 The Applicant has responded to Ramac Holdings Ltd explaining clearly why the other sites proposed by the landowner would not be appropriate or acceptable (REP5-004) and would certainly not constitute environmentally or logistically better locations.

30 Considering the size of the onshore substation, the Applicant has demonstrated through technical responses and reference to other similar developments that the land sought to be acquired is reasonable and commensurate with an offshore wind project of this type and scale (REP5-004).

31 Furthermore, the additional land to the south of the substation has been demonstrated to be required for the relocation of the current occupier of the site (Ministry of Justice) and to manage the existing tenants to limit impacts on them and their businesses.

3.5 Applicant's Conclusion

32 It is the Applicant's conclusion that with regards HRA matters there are no residual matters of material concern for site selection and alternatives.

33 With respect to compulsory acquisition, the Applicant has demonstrated that full consideration has been given to the siting of the onshore substation and the incidental land to the south, and has identified a site that is reasonable and proportionate for the carrying out of the development. The Statement of Reasons (REP-027) demonstrates why the compelling case exists in the public interest for the need to acquire such land.

4 Shipping and Navigation

4.1 Background

34 Matters relating to shipping and navigation have formed a significant focus for the Examination of the Thanet Extension proposal. At the outset of the Examination the ExA produced a Sea Zones Plan (PINS Ref OD-008), the matters forming the majority of the Examination are focussed on the NW and SW sectors (Princes Channel Approach, and Foreland Elbow respectively), there were no material matters discussed in relation to the NE and SE Sectors.

35 Matters in relation to recreational sailing were addressed and a SoCG agreed with the RYA at an early stage in the Examination. Primary areas of focus raised by IPs, relate to maritime safety, pilotage, and perceived economic impacts that may arise through vessels no longer utilising the 'inshore route'. The inshore route is characterised by Trinity House as an area of general navigation and can be considered to encompass the NW and SW sectors of the ExA's Sea Zones Plan.

36 Towards the end of the examination matters were focussed both spatially, as above, and thematically with regards pilotage and economic impacts.

4.2 Policy

37 NPS EN-3, paragraph 2.6.161 advises that development consent should not be granted if it is considered that interference would be caused with the use of recognised sea lanes essential to international navigation. Paragraph 2.6.162 notes that site selection should be made with a view to avoiding or minimising disruption or economic loss to shipping and navigation industries.

38 For less strategically important shipping routes, an applicant will be expected to minimise negative impacts to as low as reasonably practicable (ALARP) (NPS EN-3, para 2.6.123). Schemes should minimise the effects on recreational craft and build in appropriate mitigation measures such as buffer areas. The cumulative effects of other relevant proposed, consented and operational offshore wind farms should be taken into account when assessing interference, obstruction or danger to navigation and shipping (para 2.6.169).

39 As required by NPS EN-3 paragraph 2.6.156, the Applicant undertook a Navigational Risk Assessment (NRA) to identify existing vessel activity and navigational features in the vicinity of the Proposed Development (PINS Ref APP-089, revised by REP4B-002 and REP5-039]. ES Chapter 10 'Shipping and Navigation' (PINS Ref APP-051) summarises the work undertaken as part of the NRA.

40 The NRA principally followed the methodology published by DECC and the Maritime and Coastguard Agency (MCA) Marine Guidance Note 543 (MGN 543). The SoCGs with both the MCA (PINS Ref REP6-013) and TH (PINS Ref REP6-025) record agreement that the NRA was undertaken in accordance with the correct requirements.

41 The Applicant's final position on policy in relation to shipping and navigation is provided in Appendix [] to Deadline 8.

4.3 Changes to proposed development during examination

42 In response to the concerns raised by IPs throughout the examination, the Applicant has sought to amend the project and provide additional mitigation to provide comfort on these matters. Changes to the proposed development committed to during examination are:

- A material change to the project in the form of the Structures Exclusion Zone which limits the installation of permanent structures including wind turbine generator blades to be outside of the SEZ
- Pre and post construction AIS monitoring
- Provision of metocean data
- Commitment to a mitigation agreement relating to the relocation of the Tongue Deep Water Diamond

4.4 Areas of disagreement

Future baseline

43 A particular theme identified during the Examination is the matter of the future baseline for assessment. The Applicant adopted a 10% increase in vessel traffic, that is an increase in absolute numbers of vessels using each of the key routes identified within the study area. IPs, notably the Ports of Tilbury and London Gateway, made representations that they considered this to be insufficient when considered in the context of their respective aspirational growth.

44 The theme was further developed through the 3rd round of ExA questions, which in question 3.12.15 requested parties to:

a) confirm [the] understanding of 10% growth of use of the inshore route; and b) provide a reasoned estimate for growth of traffic using the NE Spit Pilot Boarding Diamond;

45 In response the Ports provided a representation which drew on the MMO Futures information referred to by the Applicant at a previous Deadline (D5). In summary the ports contended:

Applying the freight/vessel number growth ratio of 0.69 discussed above this would result in growth of 37.8% to 54.5% in all vessel numbers over the reasonable planning horizon.

46 At Deadline 7 the Applicant submitted a detailed analysis of potential future baseline scenarios, identifying that the vessel freight forecast which underpinned both the Ports NPS and the MMO Futures report had been superseded by a revised forecast for vessel freight.

47 The Applicant submitted that the Ports proposed ratio, whilst intended to provide a transparent and 'rule of thumb' ratio based on just over a year of information, risked conflating an apparent short-term correlation with long term causation in seeking to put forward a linear relationship. The Applicant identified that no such relationship was identified over the long term, or indeed in the Maritime statistics which formed the basis for the maritime freight forecast.

48 The Applicant's Deadline 7 submission (PINS Ref REP7-026) confirmed that maritime freight tonnage is, given favourable economic circumstances, projected to increase over the reasonable planning horizon. It also identified that the growth forecast needs to be contextualised by the current historic patterns of decline across certain sectors, notably coastwise freight, and the sensitivity to wider macroeconomic patterns such as the 2008 financial crisis and the current uncertainty over the UK exiting the EU.

49 The Applicant's position is that is no clear relationship between tonnage and ship arrivals at the Port of London. Tonnage is seen to increase over the periods studied (6.9% for the period 2000-17), but vessel arrivals remain broadly static with an average growth of -0.05% over the period 2009-17.

50 It should therefore be recognised that there is a very clear difference between the aspirational growth of commercially minded ports, and the reality of vessel traffic growth illustrated in this document.

51 The results of the analysis are that the proposed future baseline of an aggregate 10% increase in vessel traffic is appropriate and accounts for likely fluctuations at the macroeconomic scale and vessel trends. In light of this the Applicant has proposed a 10% increase in vessel numbers as a reasonable and appropriate future baseline for the purposes of assessment. This aligns with projections made for other OWF developments, and specifically accords with predictions made elsewhere for the Thames.

Pilotage sea room

52 Prior to the application, the Applicant recognised concerns raised by PLA regarding pilotage and undertook a pilot transfer simulation with PLA and ESL to demonstrate feasibility (APP-090). Despite the positive outcomes of that simulation, in response to Section 42 consultation the Applicant reduced the Order Limits to provide additional sea room (APP-040).

53 PLA and ESL have consistently identified an area of 2nm working area + 1nm buffer at NE Spit to be the distance required for the continuation of unimpeded pilot transfers (REP1-141), that the NE Spit diamond should not be regarded as a fixed point and that the no anchoring line should be viewed as a reasonable limit, given the anchorage to the west (REP2-049). The Applicant notes that the no anchoring line is useful charted position, however it is not a fixed limitation on pilotage. PLA / ESL have noted that pilots have been boarded and landed within 1nm of a wind farm, but this is rare occurrence (REP3-069).

54 PLA / ESL confirmed at Deadline 3 that the '*width between the NE Spit buoy and the current extension boundary is not the important one for pilotage operations. For all practical purposes the relevant distance is between the RLB and the charter boarding position, the NE Spit Pilot Station'* (REP3-087). This clearly identified the area of the NE spit pilot diamond as being of greatest concern.

55 The Applicant held a workshop on 27th February (prior to Deadline 3) which all relevant IPs attended. One of the key aims of this workshop was for IPs to provide inputs on their use of sea room that would aid the Applicant in determining changes to the project to address their concerns. Appropriate materials were provided to allow IPs to identify key areas and the breadth of their use of the area, however attendees were unwilling to provide this information.

56 Further to this, PLA / ESL have not provided detailed information regarding pilotage that may be expected of the operators of this service and which could have been used to inform the examination and the Applicant's assessment. Information such as the location, timing and metocean conditions of pilot transfers has been left to qualitative inputs, e.g. the proposition that '*One third of the boardings and landings took place during or adjacent to periods when ESL was operating a restricted service*' (REP5-070).

57 As such the Applicant relied on the qualitative information received at the workshop, analysis of AIS data and submissions made up to Deadline 3 to inform the extent of the project amendment. The limited information provided by PLA/ESL (for example the broad scale 'ESL working areas' for 2017 and 2018) does corroborate the Applicant's assessment of the area, not least the fact that the primary focus of pilotage is around the diamond with other areas (e.g. Elbow, NE Spit buoy) being considerably less frequently used).

58 At Deadline 4 the Applicant submitted the Structures Exclusion Zone to provide additional sea room (REP4-018), which provided over 3nm of sea room in the most heavily used area for pilotage and increased sea room in other, significantly less utilised locations. The ability to undertake any particular pilot transfer safely is not defined solely by the need for 3nm of clear sea room, as seen in the pilot simulation plots (REP1-045), the AIS Animations (REP6-060) and from many other locations around the country where pilot transfer can and do occur in much less sea room. As such the Applicant took a proportional approach to minimising the effect on pilot operations through the introduction of the SEZ.

59 Responding to the introduction of the SEZ, PLA / ESL did not agree that the 2nm + 1nm provided for at NE Spit is sufficient (REP4C-015) and raised concerns regarding pilot transfers in the vicinity of Elbow buoy. LPC, however, accepted the distance provided at Elbow buoy due to there being fewer pilot transfers and generally smaller vessels (REP4C-012) although they did not accept the distance at the pilot diamond as being sufficient, despite this meeting the requested 3nm area. At Deadline 5 LPC raised concerns about the distance between the NE Spit buoy and the turbines (REP5-061), although as previously noted PLA / ESL highlighted that this distance was not the important one for pilot transfers.

60 In summary, the requirement for 2nm + 1nm in the area of the NE spit pilot diamond (the area of most dense pilot transfers) has been requested consistently by IPs. The Applicant responded to this be providing this area (and more when considering that the no anchoring area is not a fixed limit and is, to a large extent, an arbitrary boundary) through the introduction of the SEZ. Amongst the practitioners there is no consistent view as to the need for this distance elsewhere, which confirms the Applicant's position that availability of 3nm sea room is not a de facto limit on all pilot transfers in all locations. Pilot transfers would continue to be able to be undertaken in the same manner and in largely the same area as at present.

Transiting vessels sea room

61 In order to address the concerns relating to larger vessels seeking to avoid the inshore route the Applicant has specifically used MSP guidance for identifying the width of routes to assess and amend the project through the introduction of the SEZ, taking a highly precautionary approach in doing so, as set out in REP4-014. The use of the inshore route for transiting vessels is accepted by multiple IPs including the MCA who agreed that 'that introduction of the SEZ provides the necessary sea room to ensure safety of navigation for transiting vessels' (REP6-013) and Trinity House who agreed that 'that introduction of the SEZ provides significant mitigation to allow the necessary sea room to ensure safety of general navigation subject to other controls' (REP6-025).

62 As such, the Applicant does not agree with the proposition by PLA/ESL and PoTLL/LGPL that vessels would be forced to deviate from the inshore route due to a lack of sea room or safety concerns.

Safety of navigation

63 The Applicant submitted an MGN543 compliant Navigation Risk Assessment with the application (APP-089) which was informed by both qualitative and quantitative inputs including the pilot bridge simulation, collision risk modelling and the hazard risk assessment. Prior to the application is was recognised that there were concerns regarding safety of navigation and as such the Applicant went considerably beyond the standard approach for offshore wind farms using higher-tier evidence such as CRM and simulation (as referred to in MGN543). The NRA conclusions, supported by the results of the pilot simulation and CRM, was that the project risks were ALARP and that appropriate mitigation had been considered, including a boundary change made prior to submission.

64 During the examination, in response to IP criticism of the approach taken pre-application, the Applicant carried out further analysis of the baseline data which informed that NRA and concluded that it was entirely representative of the baseline environment (REP4-030). A hazard workshop involving all relevant IPs was held to elicit additional qualitative input into the risk scores, culminating in the NRA Addendum submitted at Deadline 4 and subsequently superseded to include residual risk scores at Deadline 5 (REP5-039). PLA / ESL sought to re-score the hazards from the hazard workshop and submitted these scores at Deadline 4C (REP4C-015).

65 The NRAA reconfirmed that the project as proposed (now including the SEZ) presented risks as ALARP following the use of mitigation and control measures. Latterly, the Applicant submitted an independent CRM undertaken on the same area as the NRAA (REP6-054) which although not feeding into any revision of the NRAA, provided additional quantitative evidence that the increase in risk from the TEOW would be minimal.

66 Whilst IPs have been critical of the Applicant's submissions there has been no clear or consistent view expressed that would suggest why an approach to NRA that has been used and accepted by PLA/ESL, undertaken by a well-respected and certified marine consultancy and which has considered a wide range of recommended evidence, is so flawed as to not be relied upon. In fact, the only attempt by IPs to present their own considered views on the navigation risks was submitted by PLA / ESL (REP4C-015) and that itself concluded that the risks (without additional risk controls) were ALARP and tolerable when considered against the PLAs recommended methodology.

67 It has also been suggested by IPs including MCA (REP6-088) and PoTLL/LGPL (REP7-042) that a conclusion on whether a proposal is acceptable or not should be based on the level of agreement between stakeholders. The Applicant does not consider this to be a valid position as it ignores both the statutory process of undertaking an MGN543 compliant NRA and the relative hierarchy of evidence that puts qualitive inputs lower down. Whilst qualitive input from IPs is clearly important and must be taken into consideration, it is not the defining measure by which a project should be assessed as being tolerable or not.

68 In summary, the Applicant has produced a significant body of evidence which incorporates qualitative and quantitative inputs from two respected marine navigation consultancies, based on industry standard methodologies and MGN543 guidance, which it is confirmed the NRA complies with. Significant weight should be placed on this varied and robust evidence base which confirms unequivocally the Applicant's position that the project would not lead to unacceptable impacts on the safety of navigation.

Commercial impacts

69 The suggested commercial or economic impacts on shipping from Thanet Extension has been set out at a very high level by IPs from the start of the examination. At Deadline 1 PoTLL and LGPL (REP1-148) stated that these impacts would manifest due to increased journey distances for certain types of vessels, reduced accessibility to the NE Spit pilot boarding station and reduced resilience of pilot boarding in adverse weather. These effects have been broadly echoed by PLA / ESL (REP1-141).

70 Whilst there has been a consistent narrative from IPs on these matters, the Applicant through reference to the NRA and supporting information considered that these affects would not occur, that there was sufficient sea room for the continuation of vessel traffic movements including pilotage, and therefore there would be no significant commercial impacts.

71 At Deadline 5 all IPs were requested to provide, in response to Action Point 17 'evidence on potential commercial, employment or economic consequences of effects of the proposed development'. Only PLA/ESL and PoTLL/LGPL responded to this action.

72 PLA/ESL in their response provided narrative on the number of pilot transfers in the vicinity of Elbow Buoy that would be unable to continue in adverse weather (a loss of resilience of their pilot service). PoTLL / LGPL also provided little evidence of how either direct or indirect commercial impacts would result from the project, however the IPs did propose assumptions on the size of vessel that may elect to avoid the inshore route and considered the numbers of vessels this may affect. Neither response attempted to quantify these effects.

73 The Applicant responded to these submissions by seeking to quantify and put into context the narrative present by IPs received using the data available (REP6-020). This submission identified that, according to the IPs own submissions, approximately 0.5% of transfers may be additionally delayed due to a loss of resilience which is well within the year to year variation of restricted / off station periods. The costs associated with vessels deviating around the wind farm, as proposed by IPs, was demonstrated to be insignificant in the context overall port traffic and within variations that would be expected from vessels during regular transits.

74 It has been concluded therefore that even when IP submissions on the extent of commercial affects are taken at face value (which the Applicant does not accept), the impact on either pilot operations or general commercial vessel traffic would be minimal and not significant in terms of either the overall quantum of vessels affected, or the overall impact on port arrivals. This, combined with the significant change to the project in order to address concerns regarding shipping (the SEZ), clearly demonstrates that the site selection has 'avoided or minimised disruption or economic loss' as required by NPS EN-3.

4.5 Applicant's Conclusion

75 Whilst there are considerable differences between IPs on these issues, both MCA and Trinity House confirm that the wind farm is acceptable for transiting vessels and general navigation, whilst deferring their position on pilotage to PLA / ESL. These IPs (PLA/ESL) have an understandable vested interest in maintaining the commercial flexibility of their pilotage service, however the Applicant does not agree that the project will fetter the ability of ESL maintain full operations in the area, given the sea room available (particularly following the introduction of the SEZ), the evidenced generally limited spatial extent of pilot transfers (REP4-018, REP6-060) and the outcomes of the NRAA and PLA/ESLs own re-scoring of these hazards.

76 It is also considered that the conclusion of navigation safety should not be defined solely by qualitive views of IPs but should focus on robust assessment in line with industry guidance.

77 The Applicant's evidenced position is that the proposed TEOW will not present unacceptable risks to navigation, neither will it lead to significant commercial or operational impacts on vessel transits or pilotage. Significant weight should be placed on the varied and robust evidence that has been submitted, all of which points to the same conclusion; that the introduction of TEOW into this area will not lead to significant impacts on shipping.

5 Commercial Fisheries

5.1 Background

78 The Applicant has maintained consistent consultation and liaison with Thanet Fishermen's Association throughout the Pre-application and Examination phases. The Applicant supported Thanet Fishermen's Association in implementing the 'Succorfish' system, a system which allows fishermen to track the precise location of their fishing activities in order to inform EIA and displacement schemes.

79 The Applicant has developed a Fisheries Co-Existence and Liaison Plan which has been agreed with the Thanet Fishermen's Association and is secured by condition in the dML. The Plan is anticipated to provide a framework to agree ongoing liaison, communication, best practice vessel management, and displacement payments where necessary.

5.2 Policy

80 Paragraph 2.6.133 states that the decision-maker "*should be satisfied that the applicant has sought to design the proposal having consulted representatives of the fishing industry with the intention of minimising the loss of fishing opportunity taking into account effects on the other marine interests*". The Applicant has demonstrably and extensively consulted with the fishing community and has agreed a Fisheries Liaison Co-Existence Plan (REP6-057) which further seeks to ensure that the positive relationship between the Thanet Fishermen's Association and the Applicant, and ongoing liaison is maintained.

81 In relation to mitigation, para 2.6.134 of NPS EN-3 advises that "*any mitigation proposals should result from the applicant having detailed consultation with relevant representatives of the fishing industry."* Paragraph 2.6.135 goes on to suggest that *"mitigation should be designed to enhance where reasonably possible medium and longterm positive benefits to the fishing industry and commercial fish stocks*". The decision-maker is then advised in para 2.6.136 to consider whether "*the extent to which disruption to the fishing industry, whether short term due to construction or long term over the operational period, including that caused by the future implementation of any safety zones, has been mitigated where reasonably possible.*". The Applicant, as noted previously, has drafted and agreed Fisheries Liaison Co-Existence Plan (REP6-057) which seeks to ensure all mitigation measures with regards potential long term and short-term disruption, are appropriate and adequately secured.

5.3 EIA conclusions

82 The Applicant in ES Chapter 9 'Commercial Fisheries' (PINS Ref APP-050) assesses impacts on commercial fisheries of the Proposed Development in all its phases, including cumulatively with other projects. The EIA on which the ES is based has been carried out using standard methodologies adopted for the majority of OWF developments. The ES concludes that, with mitigation, all impacts would result in 'minor adverse' or 'negligible' effects and would have no significant cumulative effect (PINS Ref APP-050, Table 9.24). This applies to all operations and fishing activities save in relation to UK drift net fishing in the array area where there would be a 'moderate adverse' impact for a discrete and limited number of fishing vessels.

83 When operational, on the basis of the relative area of the proposed development site in comparison to the combined potential areas of other wind farms, MCZs and aggregate dredging areas, the proportional loss of fishing area would be minor. This contribution would be further reduced as fishing could potentially resume within the operational array and cable corridor, with the exception of drift netting which may (subject to final layout) be displaced. The Fisheries Liaison Coexistence Plan includes a mechanism for agreeing any mitigation that may be necessary as a result of such displacement.

5.4 Areas of disagreement

Application of assessment methodology and categorisation of significance

84 The Thanet Fishermen's Association considered that the outcomes of the impact assessment for the project on the local fleet were not considered appropriate; specifically noting that they did not agree with the conclusions on magnitude/sensitivity for potters and netters. The Applicant in response to Thanet Fishermen's Association's submissions noted (in Appendix 27 of the Applicant's D6 submissions (REP6-042)) that in assigning sensitivity, consideration has been given to the fact that some of the vessels in the local fleet have the ability to deploy various gears, particularly in the case of netters and potters. The Applicant further notes that this was not the only aspect taken into account. The relatively small operational range of these vessels (i.e. 20 -25 nm from port) and their dependence on a limited number of grounds was also given due regard. Considering the aspects mentioned above a medium sensitivity was therefore assigned to local potters and netters during the construction and operational phase.

85 TFA considered that receptor sensitivity for the inshore fleet should be high. The Applicant concluded that for receptor sensitivity to be considered very high, in respect of potters during construction, fishing vessels would be expected to have much smaller operational ranges (i.e. limited to inshore areas out to the 6nm limit) and be highly limited in terms of availability of grounds.

Safety considerations and need to ensure current high level of seamanship and mutual consideration between vessels is retained during construction

86 The Thanet Fishermen's Association highlighted that there is concern that current and proposed projects will increase the safety risk for local fishermen particularly those who are lone working. The Applicant has confirmed that Fishing activities have appropriately been considered in the NRA and as part of the rationale for the SEZ. Furthermore, as additional mitigation, the Applicant has offered to support Thanet Fishermen's Association vessels in acquiring Class B AIS equipment to reduce the baseline risk. The Thanet Fishermen's Association have concluded at this stage that this form of clear identification of where individuals fish would risk loss of certain intellectual property and understanding of good fishing grounds.

Cumulative effects, and projects that have been brought forward since application was made

87 The Thanet Fishermen's Association consider that in addition to future projects and plans the application should have considered international fishing vessels as a cumulative effect. The Applicant considers this to be more appropriately deemed part of the baseline receiving environment.

5.5 Applicant's Conclusions

88 The Applicant's position is that the assessment methodology to both assessing the project alone, and cumulatively with other projects is appropriate, and reflects standard methodologies adopted for the majority of OWF developments and as endorsed by the FLOWW guidance.

89 The Applicant has agreed a robust Fisheries Liaison and Co-Existence Plan (REP6-057) with the Thanet Fishermen's Association which will ensure a robust approach to compensation and displacement payments is achieved in a transparent manner. This plan is secured within the dML. The Applicant has also offered to support Thanet Fishermen's Association in maritime safety matters by financially supporting the installation of AIS monitors; this is in addition to the funding of 'succorfish', the data from which has been used to inform the EIA, will be used to inform any displacement payments, and can be used by the Thanet Fishermen's Association to inform assessments of the implications of future plans and proposals.

90 The combination of the above, with a robust, policy and best practice lead assessment means that confidence can be placed on the conclusions, and in the ongoing positive relationship between the Thanet Fishermen's Association and the Applicant.

6 Fish ecology

6.1 Background

91 The Applicant concludes in Volume 2, Chapter 6 of the ES (APP-047, Section 6.17) that the effects on fish and shellfish ecology are no greater than of 'minor adverse' significance and there is no requirement for additional mitigation measures other than those which form part of the embedded mitigation. Agreement of the Applicant's methods used in the assessment was achieved through the Evidence Plan process (APP-137 and Appendices) and is confirmed in SoCGs with Natural England (REP6-016) and the MMO (EP6-011).

92 Following agreement on the approach to characterising the receiving environment and the approach to assessing potential effects, the MMO have raised further questions during the Examination phase of the project. In summary the area of disagreement is limited to which underwater noise metrics and assumptions to apply, and the potential effect on herring (Thames and Downs spawning stocks) and sole, and thus the requirement for mitigation in the form of a seasonal restriction.

6.2 Policy

93 NPS EN-3 sets out policy on commercial fisheries and fishing. Paragraph 2.6.132 states that the decision-maker "*should be satisfied that the site selection process has been undertaken in a way that reasonably minimises adverse effects on fish stocks, including during peak spawning periods…*". The Applicant has reached agreement with the MMO that all relevant policy has been referred to and applied to the assessment of impacts on fish and shellfish receptors. This is recorded within the SoCG between the Applicant and MMO which was submitted at Deadline 6. It is the Applicant's position that the site selection process is appropriate, and that the assessment confirms that all reasonable measures, such as soft start piling, are undertaken and adverse effects have been minimised. Further to this the Applicant has offered an additional commitment to restrict piling activities to a single year, thereby avoiding impacts across multiple peak spawning periods.

6.3 Areas of Disagreement

94 Following their submission at Deadline 4, the use of underwater noise metrics and the potential effect on fish stocks has been reopened by the MMO during the examination. The following sections provide a summary of the positions agreed prior to application being made, and during the examination phase.

MMO position agreed under EIA Evidence Plan.

95 Both the MMO and Cefas were active members of the project's EIA Evidence Plan. The MMO's position, as shared by Cefas, is recorded in the EIA Evidence Plan (Application ref 8.5), with specific agreement on the metrics and parameters to be considered with regards underwater noise captured in Appendix A to 8.5 (Application ref 8.5.1). Page 41 of 8.5.1 records agreement on the approach to characterising the baseline for the purposes of the EIA and includes reference to the HAWG 2016 data (the Applicant went on to use 10 years of the IHLS/HAWG data), and Thames survey data. On this latter source the Applicant referred to historic data. The Applicant also noted a site specific survey that had been undertaken, the scope of which was agreed with the MMO. At P45 of the above document agreement is noted as being reached with the MMO, Cefas (and IFCA) regarding the approach to underwater noise modelling. It states (within the minutes of the meeting):

Marine Noise & Fish - The noise modelling results will also be used to assess the impacts of underwater noise on fish. A brief discussion was held with regards to the Hawkins (2014) study and wider metrics. It was agreed that the metrics should be unweighted with the Popper criteria (2014) forming the primary basis for assessment with other relevant studies taken into account for context. SL confirmed that the site specific fish surveys have now been completed.

96 Following receipt of Section 42 a further Evidence Plan meeting was held, the outcomes of which are recorded at P61 of the EIA Evidence Plan. In summary it is noted that the approach to adopting a fleeing speed was understood and agreed as having been clarified by RF on behalf of Cefas. Further questions were noted including a request for the SELss source levels, which were provided in the final application. A further question of note was asked by the MMO and Cefas:

The peak SPL should be unweighted according to the National Marine Fisheries Service (NMFS) (2016) criteria. Also, it is not clear whether this weighting has been used in the actual modelling, or if it has just been used for illustration purposes in Figure 4-7. This should be clarified.

97 The Applicant responded to note that weighting had not been applied in the assessment for SPLpeak. RF, on behalf of Cefas and MMO confirmed this matter to be clarified.

98 In summary it is the Applicant's position that all matters in relation to the characterisation of the receiving environment, and the approach to assessing impacts associated with underwater noise, were agreed and confirmed as such under the auspices of the EIA Evidence Plan process.

MMO changed position as a result of other projects

99 Following submission of the Application the MMO's relevant representations captured a change in policy with requests for further information and suggested additional underwater noise modelling. The Applicant provided several clarifications and responses, including at Deadline 4C a clarification note which undertook a detailed assessment of potential impacts on herring and sole, using revised modelling and highly precautionary assessment metrics which assume no fleeing. The Applicant's caveats with regards the use of such a highly precautionary assessment methodology, for a receptor which is recognised as not being under any threat and not being subject to any form of fishing management measures, will not be reiterated here as they are a matter of record, most recently at Appendix 3 to this Deadline 8 submission. The Applicant however highlighted that it was unaware of any detailed rationale, scientific evidence, or policy basis for the change in approach adopted by the MMO.

100 The MMO's Deadline 6 submission confirms the rationale for the change in advice to be unrelated to scientific evidence, or to have any specific relevance to the Thanet Extension project. Specifically, the representation notes that:

The applicant has questioned why fleeing was not originally raised as an issue during the PEIR review, although it was queried and discussed, which has been the case for a number of wind farms. At that time, it was requested that fleeing assumptions, primarily the fleeing distance (radius) and swim speed of the animal/s, were included in the Environmental Statements. However, following a significant increase in the number of assessments suddenly adopting 'fleeing' for fish, the MMO and its technical advisers examined the evidence put forward by various developers (or rather lack of evidence) to support this assumption, and considered the current scientific literature. Thus, the MMO current position is that it cannot support the assumption of fleeing in fish due to the lack of direct scientific evidence provided by developers in their assessments.

101 It appears therefore that the MMO's position is based on an aversion to multiple projects adopting a similar, and transparently so, approach to assessment. The Applicant notes therefore that the MMO acknowledge that the request for further information reflects an apparent concern over other developer submissions rather than anything based within the scientific literature that would drive a change in policy.

Thanet Precedent

102 Representations received from the MMO confirmed that the Thanet OWF had a seasonal restriction, and as such the Thanet Extension project should also have one. Certain inconsistencies were noted by the Applicant in response. Namely:

- The seasonal restriction for the existing Thanet OWF was for the period February – April, and in relation to a single stock that was recognised as being in decline (Thames/Herne Bay herring spawning stock).
- The seasonal restriction was not applied in relation to the wider, healthy, North Sea Downs herring spawning stock, and was not applied to the sole spawning stock.
- Upon review of the MMO published literature reviewing OWF monitoring, the Applicant also questioned whether the existing Thanet OWF seasonal restriction had in fact been removed.

103 The Applicant and MMO subsequently discussed a potential compromise, drawing on the rationale that underpinned the removal of the existing Thanet OWF seasonal restriction. The Applicant's position, as expressed at Deadline 6A in response to R17Q4.1.1. (REP6A-002), is that of the primary factors of relevance to the removal of the seasonal restriction all can be applied directly to the Thanet Extension project, as set out further in Appendix 3 to Deadline 8.

Underwater noise

104 The MMO has made representations with regard to the need to consider static receptors. The Applicant responded at Deadline 4C with an analysis of revised underwater noise modelling, utilising a methodology of assessment that has been used at multiple projects to remove or refine seasonal restrictions. At Deadline 6 however the MMO suggested that *the applicant's conclusions (which are largely based on the dubious assumption of a fleeing receptor)*. The Applicant can confirm that contrary to the response from MMO, the conclusions are based on a static receptor as set out in Annex A to Appendix 7 at Deadline 4C (REP-010).

105 At Deadline 7 the MMO also acknowledge that a seasonal restriction for sole may not be required. The Applicant has provided additional clarifications with this Deadline 8 submission that demonstrate that a sole seasonal restriction is not required.

6.4 Summary of impacts on key receptors

106 The following presents the Applications closing summary on each of the relevant stocks.

Herring – Thames Stock

107 There is no interaction with spawning grounds under any noise propagation scenario. The Margate sands complex serves to attenuate all noise.

Herring – Downs Stock

108 There is limited interaction with historic spawning ground (0.07% overlap with spawning potential for eggs/larvae; 0.049% overlap with spawning potential for non-fleeing adult, at the worst case location; 0.004% overlap with spawning potential for non-fleeing adult, at the least worst case location; mean impact on spawning potential for all locations combined is 0.962%); this is *de minimis* interaction when considered in the context of the IHLS hotspots.

Sole

109 Under a highly precautionary assessment assuming a non-fleeing receptor, there is minimal overlap with spawning potential (0.026% impact on spawning potential for non-fleeing adult at the worst case individual WTG location; 0.009% at the least worst case location; mean spawning potential for all locations combined 0.563%). Recognising that sole have been identified as demonstrating a fleeing response to underwater noise a more realistic impact is an overlap with 0.062% of spawning potential for all locations combined (mean). Therefore this is also considered to be a *de minimis* level of interaction.

6.5 Applicant's Conclusion

110 The Applicant has provided reference to historical spawning grounds delineated within Coull et al (1998) and Ellis et al (2015) as endorsed by Cefas and MMO (see scoping opinion for Thanet Extension, and across multiple OWF and marine aggregate EIAs). To complement the Cefas endorsed datasets the Applicant has provided a composite dataset of herring larvae (IHLS) over a ten year period, which includes the data used to define the Ellis et al (*ibid*) dataset. The larval data strongly indicate that the spawning grounds, identified as the areas of highest larval density) are to the south of the proposed project. Notwithstanding this the Applicant has provided a worst case assessment, based on historical spawning grounds (not identified as a larval hotspot in the period 2008-2018) and assuming the herring and sole act as a stationary receptor.

111 The impact of this highly precautionary maximum design scenario/worst case assessment is an effect which is <1% of spawning potential on any receptor. The Applicant's position reflects the outcome of this highly precautionary assessment, which is that there is no scientific or policy based justification for mitigation measures (e.g. seasonal restriction) in the absence of a predicted significant effect.

112 The Applicant has presented all information as requested by the MMO and have provided relevant information with regards the likely behavioural effects on herring. Fundamentally it is the Applicant's position that a seasonal restriction or other form of significant mitigation should only be applied where there is risk of a significant adverse effect on a receptor – such as spawning. Given the absence of any behavioural criteria, or suggestion that there is a negative behavioural impact on spawning stock that is identified within the long term IHLS datasets which correspond with long term periods of OWF construction, there is limited scientific or policy justification for such mitigation to be implemented. Any such mitigation measure would be disproportionate when considered against the scale of effect and is not supported scientifically or in policy.

7 Habitats Regulation Assessment

7.1 Background

113 As part of the HRA Evidence Plan (APP-138 to APP-140), stakeholders were invited to provide comment on the HRA screening report, prior to the submission of the PEIR. Similarly, the RIAA was provided to the HRA Evidence Plan prior to the submission of the Application. The consultation table in the RIAA (APP-131) provided a detailed account of the comments received and how they were addressed prior to the Application being made.

114 As outlined in section 2.4, following the removal of the Option 2 landfall design and enlargement of the Cable Exclusion Area the Applicant revised the RIAA to account for these design changes. The revised RIAA and screening matrices were submitted as part of the Applicant's Deadline 2 Submission (REP2-018 and REP-019, and REP2-004 respectively). The revised RIAA, similarly to the revision submitted with the Application, determined no Adverse Effect on Integrity (AEoI) for each of the European sites and features screened in.

115 Throughout the Examination and Statement of Common Ground (SoCG) processes, the Applicant has agreed with Natural England no AEoI on European Sites for the project alone.

116 The parties are also in agreement on no AEoI for onshore biodiversity, benthic ecology and fish species for the project alone and in-combination, as presented in the final positions in the Technical Topics SoCG (REP6-016). In addition, agreement was also reached on no AEoI for the saltmarsh habitat for the project alone and in-combination, as confirmed in REP6-019. However, there remains some disagreement between the parties over the potential for in-combination AEoI for the Outer Thames Estuary SPA (for red throated diver), Flamborough and Filey Coast SPA (for kittiwake and gannet) and the Southern North Sea SAC (for harbour porpoise), see section **Error! Reference source not found.** of this document.

117 The ExA sought to clarify the various disputed issues raised during the Examination through two rounds of written questions, two ISHs and requests for information under Rule 17 (EV-019, EV-045 and PD-020).

118 A Report on the Implications for European Sites (RIES) was prepared and published during the Examination by the ExA. The purpose of the RIES (PD-018) was to compile, document and signpost information provided in the DCO application, and the information submitted throughout the Examination by both the Applicant, the relevant Statutory Nature Conservation Bodies (SNCBs), and other IPs. Consultation on the RIES was undertaken between 14 May and 28 May 2019.The Applicant and Natural England provided commentary on the RIES (REP6-037 and REP6-095 respectively) which reflected the positions outlined above.

119 The Applicant submitted further information into the examination regarding the HRA as requested by the ExA and IPs. The Applicant provided a sign-posting note (as requested as question 4.1.5 of Rule 17) which identified each of the clarification and technical notes submitted into the examination by the Applicant relating to HRA matters. This sign-posting note has been secured as Annex D to the Explanatory Memorandum submitted at Deadline 8.

7.2 Policy

120 Under Article 6(3) of the Habitats Directive, an Appropriate Assessment (AA) is required where a plan or project is likely to have a significant effect upon a European site, either individually or in combination with other projects. The Applicant provided a Report to Inform Appropriate Assessment (RIAA) and screening matrices as part of their Application (APP-031 to APP-033). The RIAA considered the potential likely significant effects and Adverse Effects on Integrity (AEoI) for all relevant European sites (onshore and offshore) as a result of the proposed development. The RIAA provided sufficient information to enable the decision maker to make an AA.

7.3 Areas of disagreement

HRA matters considered in the Examination

121 The key HRA matters throughout the Examination were:

- Outer Thames Estuary SPA (for red throated diver);
- Flamborough and Filey Coast SPA (for kittiwake and gannet); and
- the Southern North Sea SAC (for harbour porpoise).

Offshore Ornithology

122 The Applicant's and Natural England's final positions with regards to the Outer Thames Estuary and Flamborough and Filey Coast SPAs were presented in the final Statement of Common Ground between the parties (REP6-015).

Outer Thames Estuary SPA

123 Both parties are in agreement that an AEoI would not result from the proposed development alone on the Outer Thames Estuary. Furthermore, both parties agree that the effect of displacement on red throated divers, if any, resulting from the proposed development *"is in all likelihood very small in the context of impacts from other OWF projects which lie within…the SPA*". The introduction of the SEZ was welcomed by Natural England as they project design change increased the distance between the proposed WTGs to the boundary of the Outer Thames Estuary SPA.

124 However, Natural England stated that they "*acknowledge that there is now some uncertainty whether there would be any displacement effects, given the distance that the project is now planned to be from the SPA. However, it cannot be concluded that there will be no displacement effect at all*" (REP6-015). It is the Applicant's position that the post-construction monitoring of TOWF demonstrated that red throated diver were observed within the existing wind farm. Thanet Extension is a unique case, as post-construction monitoring of TOWF is available to inform the assessment. These data demonstrate that 0% displacement in the TOWF (as RTD were recorded in the array) and that the maximum displacement effect range was observed to be less than 4 km (noting that the Outer Thames Estuary SPA is approximately 8 km from the Order Limits).

Flamborough and Filey Coast SPA

125 Both parties are in agreement that an AEoI would not result from the proposed development alone on the Flamborough and Filey Coast SPA for kittiwake. Furthermore, both parties are in agreement that Thanet Extension's contribution to collision mortality in-combination is "*is likely to be small in the context of an in-combination total arising from a number of operational, consented or proposed projects*" (REP6-015).

126 Natural England's position is that "*it was not possible to rule out an adverse effect on integrity on the SPA from operational and consented projects due to the level of annual collision mortality predicted for kittiwake*" (REP6-015). Conversely, the Applicant's position is that projects considered in the in-combination assessment, have been approved "*on the basis that there would be no adverse in-combination effects on the integrity of the SPA when these plans and projects are considered in combination*". Therefore, the Applicant maintains the position that there will be no AEoI on Flamborough and Filey Coast SPA.

127 The ExA requested confirmation as an action from ISH8 on the Applicant's and Natural England's positions on the potential for AEoI on gannet species for the Flamborough and Filey Coast (EV-045).

128 Both parties confirmed agreement that an AEoI would not result from the proposed development alone on the Flamborough and Filey Coast SPA for kittiwake (REP6-015).

129 It is Natural England's position that despite the projected decline in gannet population the conservation objectives for gannet at this site are likely to be met in-combination when Hornsea 3 project is not considered. However, "*due to Natural England's significant concerns regarding the incomplete baseline surveys for the Hornsea 3 project, and the associated level of uncertainty as regards the potential impacts of that project, Natural England is not in a position to rule out an in-combination AEoI including the Hornsea 3 proposa*l" (REP6-015). The Applicant maintains that there will be no AEoI for gannet in-combination with other plans and projects, including Hornsea 3, and that "*Thanet Extension would not cause any appreciable effect on the wider in-combination effects*" (REP6-015).

Southern North Sea SAC

130 During the Examination, following the publishing of the Relevant Representations from IPs, the Applicant agreed to provide an Outline Site Integrity Plan (SIP). An Outline SIP was submitted at D2 (REP2-033) in support of the HRA assessment and updated at D4 (REP4-022). The Outline SIP is a certified document of the Applicant's final dDCO (Appendix 7 of the Applicant's Deadline 8 Submission). Provision of a final SIP is secured through Conditions 13 and 11 of Schedules 11 to 12 respectively (the Generation and Export Cable System DMLs) of the Applicant's final DCO.

131 The production of the final SIP is included in the Schedule of Mitigation (REP7-017). The final SIP will be submitted for approval post final scheme design and prior to commencement of construction.

132 The Outline SIP sets out the Applicant's approach to delivering mitigation and/or management measures to ensure the avoidance of significant disturbance of harbour porpoise according to the SAC conservation objectives. Therefore, allowing the conclusion of "no adverse effect beyond reasonable scientific doubt" on the SAC to be drawn.

133 Both the Applicant and Natural England are in agreement that an AEoI would not result from the proposed development alone on the Southern North Sea SAC for harbour porpoise (REP6-016).

134 Natural England's position was that "*Until the mechanism by which the SIPs will be managed, monitored and reviewed is developed, Natural England are unable to advise that this approach is sufficient to address the in-combination impacts and therefore the risk of Adverse Effect on Integrity on the Southern North Sea SCI cannot be fully ruled out*" (REP6-016). The Applicant noted that they can only undertake the assessment, alone and in-combination, and provide mitigation as necessary to avoid an AEoI. It is the Applicant's position that the RIAA (PINS Refs REP2-018 and REP2-019), MMMP (PINS Ref APP-146/ Application Ref 8.11) and SIP (PINS Ref REP4-022) provide certainty that an AEoI will be avoided with respect to the SNS SAC/SCI.

135 The Applicant and Natural England agree that if they Applicant were to accept a voluntary seasonal restriction there would be no AEoI on the Southern North Sea SAC (REP6-016). However, the parties remain in disagreement over how best to secure this potential (and voluntary) mitigation measure. Natural England "*have requested to secure this seasonal restriction on the face of the DCO / DML to ensure it is enforceable*". The Applicant recognises Natural England's concerns but cannot agree to a seasonal restriction that is not currently required and will only become required should a mechanism to manage a range of SIPs not be in place.

136 As already stated the detailed suite of mitigation measures are set out in the SIP, which is adequately secured through Condition 13 of Schedule 11 and condition 11 of Schedule 12. In the Applicant's view it is not appropriate to include the content of mitigation documentation on the face of the order, particularly given that the outline SIP is drafted and certified, to require certain mitigation mechanisms to implement on a contingent basis.

7.4 Applicant's Conclusion

137 It is the Applicant's position that the AEoI of the FFC SPA, OTE SPA and SNS SAC conservation objectives can be excluded both from the Proposed Development alone and in combination with other plans and projects.

8 The Crown Estate agreement for lease

8.1 Background

138 The ExA has enquired about a number of issues relating to the project's lease from The Crown Estate (TCE):

- Status of the agreement for lease /lease
- Ability for the Applicant to lease 340MW against TCE's stated capacity of 300MW
- The need for Section 135 consent from TCE
- Status of the plan-level HRA for extension projects and the implications for TEOW.

139 TCE has responded to each of these points throughout the examination (see TCE Deadline 5 Submissions - Response to action points requested by the Examining authority for ISH 8, Response to ExA's Further written questions (ExQ2), Response to Examining authority's Further Written Questions (ExQ2) Question ExQ2.3.4, Deadline 6 Submission – Annex A to appendix 23: The Crown Estate Letter, and Deadline 6A Submission – Responses to the ExA's Further requests for information under EPR rule 17). For clarity the Applicant has set out the position as it understands from the responses from TCE and how it relates to the application for development consent.

8.2 Matters outstanding

Status of the agreement for lease/lease

140 The Applicant and TCE are negotiating the terms of the draft agreement for lease for both the main site and the cable corridor for the Project. To this end meetings with relevant project managers and legal teams have been arranged to allow final form versions of these to be agreed shortly. Discussions are progressing well and there is no suggestion from TCE that there is any impediment to the grant of an agreement for lease, subject to the outcomes of the plan-level HRA, as stated in TCE's response to Deadline 5 (REP5-053). Further, the negotiations do not represent the final lease terms which will be discussed further between the applicant and TCE.

141 In order to provide comfort to the Secretary of State regarding the award of compulsory acquisition rights in the absence of agreements for lease, the Applicant has included drafting in Article 17(3) of the dDCO that would prevent the exercise of compulsory acquisition powers until such time as agreements for lease have been signed.

Ability of the Applicant to lease 340MW against TCE's stated capacity of 300MW

142 The terms of the agreements for lease will be influenced by the DCO itself and if the agreement for lease contains a maximum capacity of 300MW then, subject to TCE HRA, the Applicant would anticipate further engagement and discussions with TCE so that the maximum installed capacity in the wind farm lease is commensurate with the maximum installed capacity permitted under the development consent order. As set out in the submissions, the Applicant does not consider that the negotiations regarding the agreement for lease with TCE should influence the decision on the application. As a matter of general principle the operation of private property law is not a material planning consideration. Property negotiations are a separate process to the consideration of whether consent should be granted for proposed development. The stage of negotiations with TCE should not generally therefore influence the determination of the application on its planning merits. The Applicant acknowledges though that under the development consent order regime there is the additional question of whether the powers of compulsory acquisition should be exercised. In general the test of whether there is a compelling case in the public interest to authorise compulsory acquisition can take into account the potential for the developer to deliver the scheme to which the order relates. However the Applicant does not accept that the negotiations should affect the decision in this case. The overall case for the compelling public interest in this case is not affected by any difference between 300 and 340MW in any event. Thanet Extension would not change where interests are proposed to be acquired. Any change to the generation capacity would not materially change the need for the project or its benefits when considered against the property interests that would be affected. If the case for acquisition is made out in respect of 340MW, it is also made out for 300MW. As such it would not be appropriate therefore to amend the generation capacity in the order.

The need for Section 135 consent from TCE

143 TCE has provided section 135 consent - see Deadline 6 Submission – Annex A to appendix 23: The Crown Estate Letter.

Status of the plan-level HRA for extension projects and the implications for TEOW

144 Entry into the agreements for lease is subject to completion of the plan-level HRA (based on the best information available at that time, which represents the application documents in advance of the Structures Exclusion Zone and the Cable Exclusion Zone being introduced) by TCE which should occur very shortly. Given the agreed outcomes of the Applicant's own detailed HRA, and the fact that Thanet Extension is the only project within the region being assessed by TCE, it is very likely that the plan-level HRA would confirm no likely Adverse Effect on Integrity as a result of Thanet Extension.